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Attorneys for Respondent
WarnerMedia Direct, LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

MARCUS BROOKS, KATHARINE
GUZENSKI, RODRIGO
MALDONADO, CANDIDA ORTIZ,
and COURTNEY WALKER,

Petitioners,

v.

WARNERMEDIA DIRECT, LLC,

Respondent.

CASE NO.: 2:23-cv-07579-GW-MRW
**DECLARATION OF SU KELSAY IN
SUPPORT OF RESPONDENT'S
MOTION TO COMPEL
ARBITRATION**

Judge: Hon. George H. Wu
Courtroom: 9D
Hearing Date: December 14, 2023

DECLARATION OF SU KELSAY

I, Su Kelsay, declare and state as follows:

1. I am over the age of 18 and not a party to this action. I submit this declaration in support of Respondent WarnerMedia Direct, LLC's ("WarnerMedia") Motion to Compel Arbitration. I make this declaration based on my own personal knowledge, and based on review of company documents and business records and consultation with authorized company personnel, and if called upon to do so, could and would testify competently thereto.

2. I am a Senior Vice President of the Global Marketing Technologies and Operations team at Warner Bros. Discovery, Inc., the parent company of WarnerMedia. I oversee the program that handles all marketing and transactional emails, push notification, in-app notifications, and multi-channel campaigns for the streaming brands Max and discovery+, and before it was changed, HBO Max. I am therefore familiar with the customer-facing email interactions and in-app notifications for HBO Max, which has since changed to the enhanced streaming platform, Max, including email interactions and in-app notifications relating to HBO Max and Max's Terms of Use.

The HBO Max and Max Streaming Platforms

3. HBO Max was distributed in the United States by WarnerMedia between May 27, 2020 and May 23, 2023. HBO Max was a subscription-based video-on-demand streaming platform that offered an array of movies, television series, and specials from brands such as HBO, Warner Bros., and DC, as well as third-party films and television series.

4. Max has been distributed in the United States by WarnerMedia since HBO Max became Max on May 23, 2023. Max is an enhanced streaming platform.

5. During the period in which WarnerMedia distributed HBO Max, customers who subscribed to HBO Max were required to create an account with HBO Max before they were able to activate their subscription and access the HBO

1 Max platform. To create an account, all customers were required to provide their first
2 name, last name, and a valid email address. As part of this process, customers were
3 presented with the HBO Max Terms of Use, which customers were required to
4 accept in order to gain access to HBO Max.

5 6. During the period in which WarnerMedia distributed HBO Max, the
6 HBO Max Terms of Use allowed the customer that created the HBO Max account to
7 add “Authorized Users” to their account. All versions of the HBO Max Terms of Use
8 required that Authorized Users be limited to members of immediate family or the
9 household of the customer that created the account. Authorized Users did not have
10 the option to provide an email address to WarnerMedia. Thus, WarnerMedia only
11 has an email address for the customer that created the HBO Max account, and cannot
12 determine the identity of Authorized Users or contact Authorized Users.

13 7. From the time that WarnerMedia launched Max to the present, new Max
14 customers have been required to create an account with Max before they may
15 activate their Max subscription and access the Max platform. New Max customers,
16 i.e. those that are not legacy HBO Max customers, are required to provide their first
17 name, last name, and a valid email address. As part of this process, customers are
18 presented with the Max Terms of Use, which customers are required to accept in
19 order to gain access to Max. For customers that had HBO Max accounts, their
20 credentials were transferred to the Max platform, but they were required to agree to
21 the Max Terms of Use. The initial log-in process for legacy HBO Max users is
22 discussed below.

23 8. From the time that WarnerMedia launched Max to the present, the Max
24 Terms of Use allow the customer that created the Max account to add “Authorized
25 Users” to their account. The Max Terms of Use requires that Authorized Users be
26 limited to members of the household of the customer that created the account.
27 Authorized Users do not have the option to provide an email address to
28 WarnerMedia. Thus, WarnerMedia only has an email address for the customer that

1 created the Max account, including those that were legacy HBO Max customers that
2 signed into the Max platform through the process described below, and
3 WarnerMedia cannot determine the identity of Authorized Users or contact
4 Authorized Users.

5 9. All versions of the HBO Max Terms of Use, and the current Max Terms
6 of Use, allowed or allow the customer that created the HBO Max or Max account to
7 add “Authorized Users” to their account. For both HBO Max and Max, Authorized
8 Users are bound by the HBO Max Terms of Use and Max Terms of Use, including
9 the arbitration agreement, by virtue of using the HBO Max or Max platform.

10 10. On December 20, 2022, WarnerMedia updated the HBO Max Terms of
11 Use, including its arbitration provisions. Starting on December 20, 2022,
12 WarnerMedia provided notice to all current and former customers to HBO Max that
13 WarnerMedia had updated the HBO Max Terms of Use. A true and correct copy of
14 the updated terms is attached hereto as Exhibit 1.

15 11. Starting on December 20, 2022, using the email account
16 HBOMax@service.hbomax.com, WarnerMedia sent direct emails to the email
17 addresses that all current and former customers provided when creating their account
18 with HBO Max. The subject line for the email stated “HBO Max has updated Terms
19 of Use.” The body of the email stated the following, and contained two hyperlinks,
20 shown in purple and underlined text, to the updated Terms of Use:

21 Updated Terms of Use

22 HBO Max has updated our [Terms of Use](#) ("Terms"). The updates contain
23 important information about your legal rights, including updates to the
24 arbitration clause and other rules and procedures that govern the
25 resolution of disputes between you and HBO Max. The updates won't
affect the way you use HBO Max.

26 These updated terms will apply as of today for new subscribers. For prior
27 and existing subscribers, like you, the terms apply beginning on the date
your subscription renews or 30 days from today, whichever comes first.
28 You can review the new updated Terms [here](#).

1 Your continued subscription to and/or access of HBO Max will confirm
2 that you have reviewed and agreed to the updated Terms of Use.

3 Thank you for being part of HBO Max!

4 12. A copy of the December 20, 2022, email notifying current and former
5 customers of the updated HBO Terms of Use is below:

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8
9 **Updated Terms of Use**

10 HBO Max has updated our [Terms of Use](#) ("Terms"). The updates contain important
11 information about your legal rights, including updates to the arbitration clause and
12 other rules and procedures that govern the resolution of disputes between you and
HBO Max. The updates won't affect the way you use HBO Max.

13 These updated terms will apply as of today for new subscribers. For prior and existing
14 subscribers, like you, the terms apply beginning on the date your subscription renews
15 or 30 days from today, whichever comes first. You can review the new updated Terms
[here](#).

16 Your continued subscription to and/or access of HBO Max will confirm that you have
17 reviewed and agreed to the updated Terms of Use.

18 Thank you for being part of HBO Max!



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21 Need help? Visit our [Help Center](#).

22
23 

24 30 Hudson Yards, New York, NY 10001

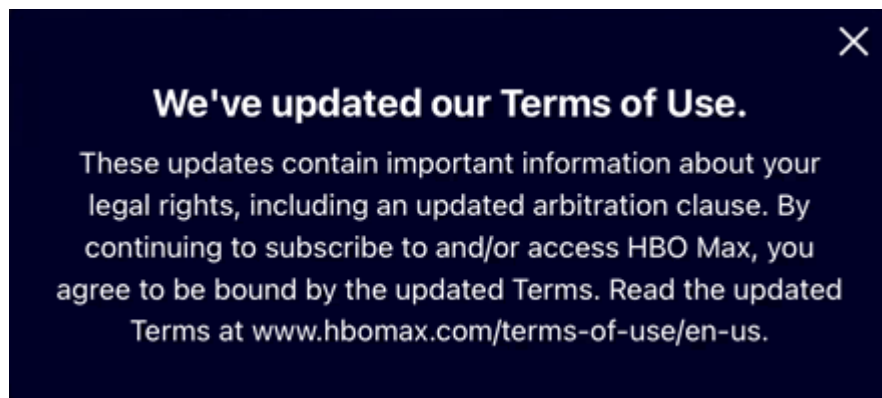
25 [HBOMax.com](#) | [Privacy Policy](#) | [Help Center](#)

26 This email comes from a notification-only address. Replies to this address are sent to an unmonitored
27 mailbox. Please don't reply to this message. If you need help with HBO Max, please visit our [Help](#)

[Center](#) or [contact us](#).

28 Reference ID: 6224

13. Also starting on December 20, 2022, HBO Max provided in-app pop-up notifications of the updated Terms of Use when a customer first accessed the HBO Max platform on or after that date. The text of the in-app pop-up notification contained a link to the updated Terms of Use and stated the following: “We’ve updated our Terms of Use. These updates contain important information about your legal rights, including an updated arbitration clause. By continuing to subscribe to and/or access HBO Max, you agree to be bound by the updated Terms. Read the updated Terms at www.hbomax.com/terms-of-use/en-us.” A customer was not able to access the platform until exiting from, or “closing,” the in-app pop-up notification. A copy of the in-app pop-up notification that appeared starting on December 20, 2022, notifying customers that accessed the HBO Max platform of the updated HBO Max Terms of Use is below:



14. I have reviewed the allegations in Petitioners’ Petition to Compel Arbitration and the Memorandum of Points and Authorities In Support Thereof, ECF Nos. 1 & 13, and each Petitioner’s Declaration In Support of Petitioners’ Petition to Compel Arbitration, ECF Nos. 28-32, that were filed in this case. I have also reviewed the Notices of Dispute that were sent to WarnerMedia on behalf of each Petitioner, ECF Nos. 14-6–14-10, that were filed in this action.

Petitioner Marcus Brooks

15. I understand that Petitioner Marcus Brooks alleges that he signed up for an HBO Max account on or about October 2, 2021 using the email address hotice783@aol.com. ECF No. 28 at ¶¶ 3, 5. WarnerMedia's records reflect that Petitioner Brooks created his HBO Max account on October 1, 2021, using that email address, and that his HBO Max subscription expired on June 1, 2022.

16. WarnerMedia's records reflect that on December 21, 2022, Petitioner Brooks was sent the email from HBOMax@service.hbomax.com that provided notice of the updated HBO Max Terms of Use, referenced above in paragraph 12, at his hotice783@aol.com email address.

Petitioner Katherine (Rose) Guzenski

17. I understand that Petitioner Katharine (Rose) Guzenski alleges she signed up for an HBO Max account on or about February 12, 2021, using the email address krsobreira@gmail.com. (ECF No. 29 ¶¶ 3, 5.) WarnerMedia's records reflect that Petitioner Guzenski created her HBO Max account using that email address on March 27, 2022, and that her HBO Max subscription expired on May 27, 2022.

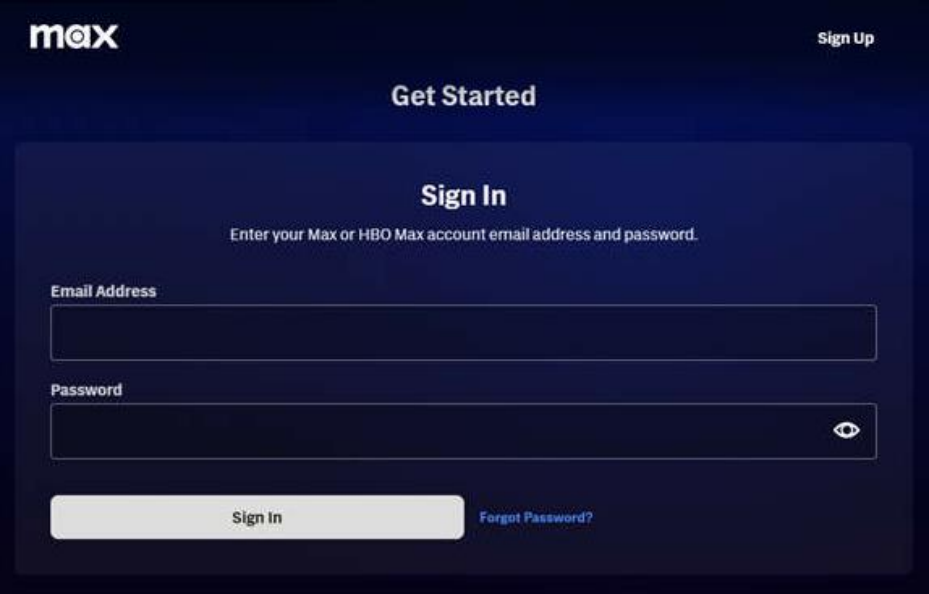
18. I also understand that the Notice of Dispute filed in this action for Petitioner Guzenski provided the email address roseguzenski@gmail.com. ECF No. 14-7. WarnerMedia has no record of an HBO Max account associated with the email address roseguzenski@gmail.com.

19. WarnerMedia's records reflect that on December 21, 2022, Petitioner Guzenski was sent the email from HBOMax@service.hbomax.com that provided notice of the updated HBO Max Terms of Use, referenced above in paragraph 12, at her krsobreira@gmail.com email address.

20. WarnerMedia's records also reflect that Petitioner Guzenski signed in to her HBO Max account and accessed the HBO Max platform on a Vizio television on February 5, 2023.

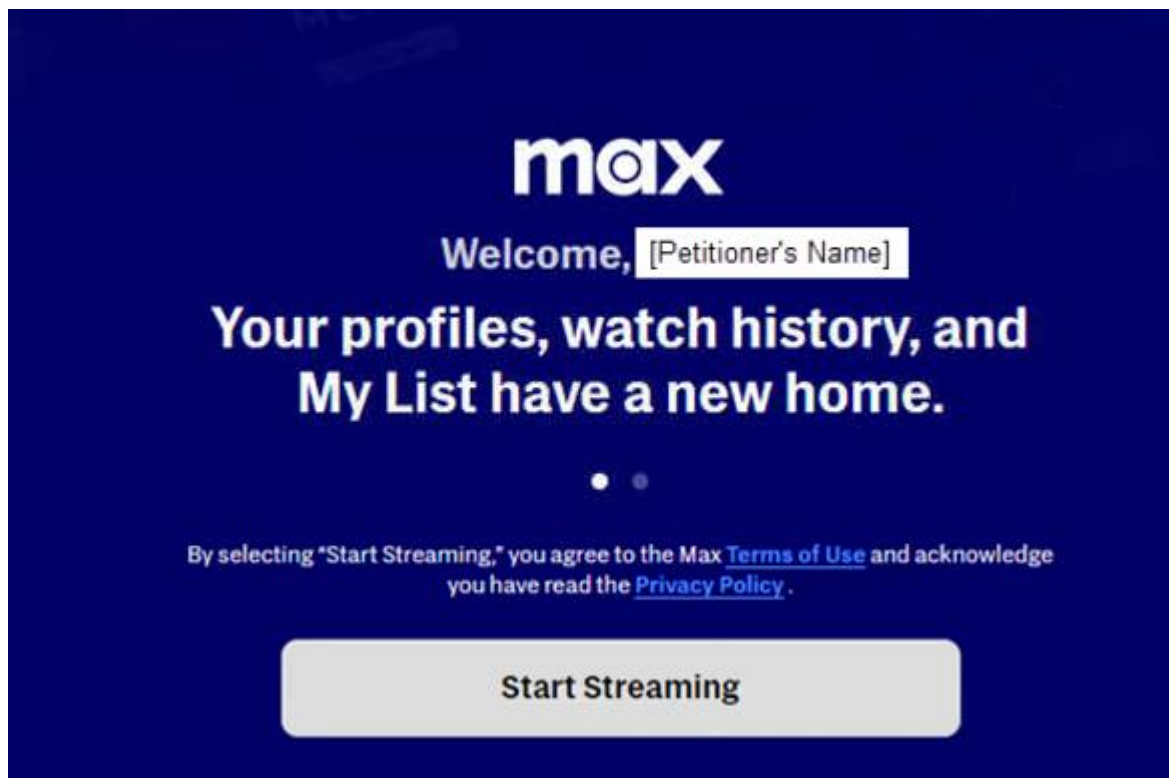
1 21. WarnerMedia's records also reflect that Petitioner Guzenski had logged
2 into the new Max service on June 22, 2023, using the email address
3 krsobreira@gmail.com.

4 22. As explained above, starting on May 23, 2023, HBO Max was replaced
5 by Max and every customer that tried to access HBO Max was redirected to the new
6 Max platform and were required to enter their account credentials to log in. A copy
7 of the sign-in page for the Max platform that would have appeared at the time
8 Petitioner Guzenski logged in to her account on June 22, 2023, is shown below:



The screenshot shows the Max website's sign-in interface. At the top left is the 'max' logo, and at the top right is a 'Sign Up' link. Below the logo is the heading 'Get Started'. In the center is a 'Sign In' section with the instruction 'Enter your Max or HBO Max account email address and password.' There are two input fields: 'Email Address' and 'Password'. The 'Password' field has an eye icon to its right. Below the fields is a 'Sign In' button and a 'Forgot Password?' link.

23. After signing in, Petitioner Guzenski was presented with a stand-alone screen that contained a hyperlink to the Max Terms of Use, dated May 23, 2023, and required Petitioner to click “Start Streaming” before accessing the Max platform. A true and correct copy of the Max Terms is attached hereto as Exhibit 2. Further, the page stated “By selecting ‘Start Streaming’ you agree to the Max [Terms of Use](#) and acknowledge you have read the [Privacy Policy](#).” A copy and exemplar of the sign-in page for the Max platform that would have appeared at the time Petitioner Guzenski accessed the Max platform on June 22, 2023, is shown below:



1 WarnerMedia's records reflect that thousands of the individuals on whose behalf
2 these notices were purportedly sent never had an HBO Max account.

3 35. In addition, I understand that Petitioners' counsel of record in this case
4 filed demands for arbitration in the American Arbitration Association ("AAA") on
5 July 18, 2023, on behalf of each of the Petitioners referenced above and 1,025
6 additional individuals. I also understand that Petitioners' counsel of record in this
7 case provided the AAA with a spreadsheet containing the email addresses for each of
8 those 1,030 individuals.

9 36. WarnerMedia's records reflect that the email addresses provided for
10 only 798 of those 1,030 individuals are associated with an HBO Max account. As of
11 October 10, 2023, 555 of those 798 individuals have signed into the new Max
12 streaming service and affirmatively agreed to the Max Terms of Use.

13 I declare under penalty of perjury that the foregoing is true and correct.

14 Executed on November 16, 2023, in Los Angeles, California.

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EXHIBIT 1



TERMS OF USE

Welcome to HBO Max! We hope you enjoy our platform, with its unique personalization features, and the variety of high-quality content for everyone in the family, including all of the HBO service together with a collection of even more movies, shows, and new Max Originals.

FIRST, AN IMPORTANT MESSAGE: PLEASE READ THESE TERMS OF USE ("**Terms**" or "**Terms of Use**" or "**Agreement**") CAREFULLY, AS THEY AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS, INCLUDING, BUT NOT LIMITED TO, WAIVERS OF RIGHTS, LIMITATION OF LIABILITY, AND YOUR INDEMNITY TO US. **PLEASE NOTE THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE TERMS REQUIRE THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN COURTS OR JURY TRIALS, AND LIMIT THE REMEDIES AVAILABLE IN THE EVENT OF A DISPUTE.**

If any provision of these Terms is determined by a court to be unlawful, void, or for any reason unenforceable, then that provision is deemed severable from these Terms and shall not affect the validity and enforceability of any remaining provisions.

1. ABOUT THESE TERMS

These Terms, together with the additional conditions of your Subscription (as defined in [Section 2.2](#)), constitute a legally binding agreement between you and the entity providing you with



access to the Platform, which may be, depending on the Service Area in which you reside, WarnerMedia Direct, LLC, WarnerMedia Direct Latin America, LLC, HBO Nordic AB, HBO Europe s.r.o., or one of their subsidiaries or affiliates (collectively, **"HBO MAX," "us" or "we"**) and govern your use of the HBO Max platform. See Section 5.9 to identify the HBO Max entity that provides you access to the Platform and for other applicable terms based on your Service Area. The programming, promotional and other content that is available through the HBO Max Platform is referred to as **"Content"**. This Content along with all other elements of the HBO Max platform including its features, user interface, software, and all associated mobile application(s), website(s) (such as <https://hbomax.com>) and other technology platforms are collectively referred to in these Terms as the **"Platform"**. The Platform provides you with access to the Content streamed over the internet to compatible devices. References to **"you"** in these Terms may also include any "Authorized Users" (as defined in Section 2.2). Our Privacy Policy describes how we treat your personal information and how we communicate with you and can be viewed at <https://www.hbomax.com/privacy>. Your access or use of the Platform confirms that you have read, understood and agreed to the Agreement on behalf of yourself and on behalf of any Authorized Users.

2. SETTING UP YOUR HBO MAX ACCOUNT AND SUBSCRIPTION

2.1. WHO CAN SUBSCRIBE TO THE PLATFORM:

You must meet the following criteria (the **"Eligibility Criteria"**) to subscribe to the Platform: (a) reside within (a) one of the fifty (50) states of the United States of America (**"U.S."**), the District of Columbia, or certain U.S. territories as set forth in Section 5.9 (the

Steps to Create an HBO MAX Account

Direct-to-Consumer Subscription

Subscription with Subscription Provider other than HBO MAX

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payments through your Subscription Provider, please contact your Subscription Provider directly.

Multiple Subscription Offerings and Plan Switching

We may offer multiple Subscription plans to access the Platform. The pricing and offers for Subscriptions to the Platform may vary by Service Area (or within a Service Area) and we may change them over time without notice (except as may be required by applicable law). Each Subscription plan may offer different Content availability, functionality, device compatibility or have certain conditions or limitations, which will be disclosed during your sign-up or in other materials describing the Subscription plan.

Within each Service Area, and subject to availability with your Subscription Provider, you may be able to change your Subscription from one plan to another. Additional terms applicable to the switching of a Subscription plan (such as the applicable charges and changes to billing dates) will be provided when you select the "Switch Plans" option in your Account settings on the Platform within your Service Area.

Authorized Users

Once you create an HBO Max Account, you will have the option to add up to five (5) authorized user profiles to your HBO Max Account (the **"Authorized Users"**). We may limit the maximum number of Authorized Users you can add or that can simultaneously use the Platform. Authorized Users are limited to members of your immediate family or household.

If you are a parent or legal guardian and would like to make your minor child an Authorized User you can create a profile for that



minor child ("**Kid's Profile**"), where you will be required to create a "PIN" and set "Parental Controls" in order to help control what Content each Authorized User of a Kid's Profile is allowed to view on the Platform. You are responsible for monitoring whether your minor child uses the Kid's Profile. Please review the Parental Controls information in Section 3.3 below to learn how to customize the Content on your HBO Max Account for each Kid's Profile. By adding a Kid's Profile, you represent and warrant that you are the parent or legal guardian of each minor child affiliated with the Kid's Profile and that you have the authority to consent to this Agreement, for yourself and each Authorized User, including any Authorized User who is a minor child.

Your HBO Max Account will function as the "master account" for all Authorized Users. EACH AUTHORIZED USER'S VIEWING ACTIVITY MAY BE ACCESSIBLE TO YOU AS THE HBO MAX ACCOUNT HOLDER, INCLUDING STREAMS BY TITLE, PARENTAL CONTROLS, AND ANY CHANGES TO THE AUTHORIZED USER SETTINGS. IT IS YOUR RESPONSIBILITY TO INFORM EACH AUTHORIZED USER OF THIS FEATURE.

You are responsible for all activity by each Authorized User and for any other activity under your HBO Max Account, including the devices that are used to access the Platform. You are solely responsible for maintaining the confidentiality of your HBO Max Account email, password and Parental Control PIN. In addition, to prevent unauthorized access to your HBO Max Account or the Platform, you and each Authorized User must maintain control over the devices used to access the Platform, not permit any unauthorized user to access your HBO Max Account, and not reveal your email and password or Payment Method to anyone.

Free Trials

We will not notify you that your Trial Subscription or promotional pricing offer is about to end unless we are required to do so by applicable law.

Promotional Offers

You agree not to register multiple times for the same promotional offer using multiple names, addresses, email addresses or other means.

Ongoing Subscription

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charged to your Payment Method by your Subscription Provider on a recurring basis according to your designated billing cycle.

Billing Cycle

The Subscription Fee will be billed at the time you establish your Subscription and on an ongoing basis unless you cancel your Subscription. Please note that the length of your billing cycle will vary based upon the type of Subscription you choose when you subscribe to the Platform. Note that the timing of your billing may change in the event of a problem with your Payment Method, such as an expired credit card or in the event you change your Subscription plan. You can go to the Subscription tab on the "My Account" page to see your next billing date.

Subscription Price Changes

Your Subscription Provider may change the price for a Subscription to the Platform and will communicate any price changes to you in accordance with applicable law.

Updating Payment Method

If your Subscription is directly with HBO MAX, you can update your Payment Method by going to your profile and choosing "Subscription" within your HBO Max Account on the Platform. If your Subscription is with a Subscription Provider other than HBO MAX, where available, you may update your Payment Method by accessing your account with that Subscription Provider. A change in your Payment Method may result in changes to your prior billing cycle. It is your responsibility to update and maintain the Payment Method associated with your Subscription Fee. If you are outside of your Home Country and would like to update your Payment



Method, your alternative Payment Method must be a valid form of payment issued in or otherwise authorized from within your Home Country.

Unpaid Amounts

You are responsible for all charges incurred in connection with your Subscription.

In the event your Payment Method on file with HBO Max is unable to cover the Subscription Fee, HBO Max may suspend your access to the Platform until you update your Payment Method and pay your Subscription Fee. If your subscription is with a Subscription Provider, other than HBO Max, and you have unpaid amounts, your Subscription Provider may take any action on your HBO Max Account based on the terms of your Subscription with that Subscription Provider.

We may retry or permit the Payment Service to retry billing your Payment Method after failed attempts (e.g., if your Payment Method is rejected). We also may pursue or permit the Payment Service or another third party to pursue any amounts you fail to pay in connection with your Subscription. Except as specified in Section 5.4 (Dispute Resolution), you will remain liable for all amounts and all costs incurred to collect these amounts, such as bank overdraft fees, collection agency fees, reasonable attorneys' fees, and arbitration costs.

Your Right to Cancel

YOU CAN CANCEL YOUR SUBSCRIPTION AT ANY TIME. YOU MUST CANCEL YOUR SUBSCRIPTION BEFORE IT RENEWS IN ORDER TO



AVOID BEING CHARGED FOR THE NEXT CYCLE'S SUBSCRIPTION

FEE. If you cancel your Subscription, the cancellation will become effective at the end of the then-current Subscription period and you will continue to have access to your Subscription until the end of that period. If your Subscription is directly with HBO MAX, you will need to cancel your Subscription through your HBO Max Account on the Platform. If you obtained your Subscription through a Subscription Provider other than HBO MAX, you will need to cancel your Subscription directly with that Subscription Provider in accordance with your agreement with that Subscription Provider. If you cancel your Subscription, we will retain your information in accordance with our Privacy Policy.

Your Right of Withdrawal

If you are within the Europe Service Area, you hereby agree that HBO MAX immediately provides access to the Content on the Platform upon Subscription activation, and because of that you agree that will not be able to exercise a withdrawal right from the Subscription agreement within fourteen (14) days (or any other period required by local laws) after Subscription activation, and obtain a refund.

No Refunds

UNLESS REQUIRED BY APPLICABLE LAW, WE DO NOT PROVIDE REFUNDS FOR ANY SUBSCRIPTION; NOR DO WE PROVIDE CREDIT, REFUNDS, OR PRORATED BILLING FOR SUBSCRIPTIONS THAT ARE CANCELLED. A Subscription Provider may choose to offer refunds, discounts or other consideration as a discretionary accommodation. However, each circumstance is unique and a



Subscription Provider's election to make such an offer in one instance does not create the obligation to do so in another.

3. YOUR USE OF THE PLATFORM

3.1 SYSTEM AND COMPATIBILITY REQUIREMENTS:

To use the Platform, you will need to use a computer, mobile device, streaming media player, or other device that meets the Platform's system and compatibility requirements (which we may update from time to time). Features and functionalities that we make available through the Platform may differ by device. Please check the requirements periodically, as we may change or stop support of any hardware or software platforms at any time. In order to access the Platform, you need a high-speed internet connection for your compatible device. You are responsible for any costs associated with your internet service. Your use of the Platform may count toward your data usage, depending on the terms of your agreement with your internet service provider. From time to time the Platform may be unavailable for any reason, including, without limitation: (a) equipment malfunctions; (b) our periodic maintenance procedures or repairs; or (c) causes beyond the control of HBO MAX or which we cannot reasonably foresee. In addition, on a regular basis, we test various aspects of the Platform, including but not limited to features and functionality which may result in individualized variations to our offers, messaging and user interface.

3.2. CONTENT LIMITATIONS AND DOWNLOADS:

Content Limitations

HBO MAX uses various technologies to provide you with an optimal viewing experience. That said, the viewing quality of Content, including resolution and the time it takes to begin playing Content, may be affected by the format of the Content, your location, the speed and bandwidth of your internet service, and the devices



used, among other factors. HD, Ultra HD and 4K Ultra HD availability, if and as applicable, for certain Content depends on your Subscription plan, internet service and device capabilities. Not all Subscription plans allow you to access Content in all formats and not all Content is available in all formats.

Additionally, not all Content will be available to all Authorized Users across all compatible devices. Access to certain Content may depend upon your geographic location (e.g., you may not be able to access Content outside the Service Area), whether you are able to maintain an internet connection, or sufficient bandwidth and the equipment used to access the Platform. Read the detailed description of each piece of Content to determine options for viewing that Content. While we do our best to keep the Content descriptions up-to-date, we do not guarantee that these descriptions will always be complete, current, or accurate. We also do not guarantee the accessibility of any particular Content at any time.

Live Content Availability, Blackouts, and Interruptions

Live Content is available in certain countries in the Service Area and may be subject to blackouts, device-specific limitations, or other restrictions. For instance, for live sports Content in the LATAM Service Area, if you are in a city or region that is the same as a team that is playing in a game, then the game may be blacked out for viewing as part of your Subscription. Blackouts will be applied based upon the city or region in which you are trying to access the Platform and we may use different technologies and methods to verify your location at the time of access to the Live Sports Content. No matter which Subscription plan you select, live Content may contain advertising or other interruptions.

HBOmax™ Simultaneous Streams

We may control the maximum number of simultaneous streams per HBO Max Account regardless of the number of your devices that can access the Platform. We may change the maximum number of simultaneous streams and/or impose limits on the number of devices that you may use at any time. The number of simultaneous streams may vary by Service Area and Subscription plan.

Downloads

Certain Content on the Platform may be available for temporary download on certain supported devices and on certain Subscription plans, in order to allow you to view that Content offline when you do not have a network connection ("**Downloadable Content**"). To download Content, make sure you have a network connection and sign in to the Platform on your phone or tablet. Choose an episode or movie that you want to download and tap the "Download" icon. HBO MAX may control the amount of Downloadable Content permissible for each HBO Max Account (across all Authorized Users and devices) within each Service Area, and the expiration rules for each piece of Downloadable Content. The Platform will provide you with information specifying the Content download limits and the expiration rules for each piece of Downloadable Content. Once expired you may not be able to renew Downloadable Content while outside of your Home Country depending on your Service Area. You may not be able to view certain Downloadable Content that you download while in your Home Country when you are outside of your Home Country even though you are within a Service Area.



3.3 CONTENT RATINGS/PARENTAL CONTROLS:

THE PLATFORM OFFERS CONTENT THAT MAY NOT BE APPROPRIATE FOR ALL AGES OR VIEWERS. CONTENT TYPES, GENRES, CATEGORIES, AND DESCRIPTIONS ARE PROVIDED AS SUGGESTIONS TO HELP WITH NAVIGATION. YOU MIGHT DISAGREE WITH HOW PARTICULAR CONTENT IS RATED, SOME CONTENT MAY NOT BE RATED AND/OR MAY CONTAIN STRONG OR PROFANE LANGUAGE, VIOLENCE, ALCOHOL, TOBACCO, DRUG OR SUBSTANCE ABUSE, NUDITY, SEXUAL CONTENT, MATURE THEMES AND/OR MATURE CONTENT INTENDED ONLY FOR ADULTS OR THOSE UNDER SUPERVISION OF ADULTS. Content tends to elicit varying reactions among different people. As is true for many websites and content platforms, you may come across Content that you find objectionable or that you believe may be inappropriate for certain members of your family. By accessing the Content you acknowledge and accept these risks.

You Control What Content You and Your Family Can Access

The Platform allows you to customize your settings to control what Content you and your family are able to access. If you want to restrict Content, you may create and manage a Kid's Profile. You can set "Parental Controls" when setting up each Kid Profile for the first time and you may change parental control settings by going to the "Manage Profiles" section of the Platform and entering your PIN to edit the selections. This will enable you to establish and manage Parental Control settings for each Kid's Profile linked to your HBO Max Account. Parental Controls allow you to set a maximum movie and television rating for each Kid's Profile, and are designed to filter out non-rated Content. Please note that changes made to Parental Controls may not take effect



immediately, and during some periods there could be a delay before your new settings become effective.

We do not guarantee that any movie or television ratings are accurate. The Parental Controls may not always be effective in restricting all Content that you or any Authorized User may consider objectionable, including if you disagree with the Content rating or age classification, if changes made to Parental Controls are delayed or do not take effective immediately, if an Authorized User of a Kid's Profile is allowed to access or view Content from another Authorized User with no or different Parental Control settings, or if they have access to the PIN to change the Parental Control settings.

If you choose to access or view, or allow an Authorized User to access or view, any general audience, adult or mature Content on the Platform, you acknowledge that you or they may be exposed to Content that may include nudity, sexual activity, violence, adult language, alcohol, tobacco, drug, or substance use, or are otherwise graphic in nature. You are solely responsible for monitoring and supervising all use of your HBO Max Account, including those of each Authorized User.

3.4. ADVERTISEMENTS ON THE PLATFORM:

Certain Content within the Platform may be ad-supported and that Content may change from time to time. As of the Effective Date of these Terms, Content on the HBO service and certain other Content, does not contain advertising, but that may change at any time and without notice to you. Please navigate to our Help Center at <https://help.hbomax.com> for additional information on advertising supported Content. HBO MAX does not endorse any



third-party advertiser, product or service featured on the Platform nor does HBO MAX take any responsibility for any such third-party advertiser, product or service. Any interactions you may have with an advertiser as a result of using the Platform will be between you and such advertiser. If you engage in any transaction with an advertiser featured on the Platform, including providing that advertiser with any personal Information, you agree that HBO MAX is not responsible for such transaction or provision of personal information and you further agree that HBO MAX is not liable for any claim or loss that may result from your engagement with any advertiser.

3.5 SERVICE UPDATES AND SOFTWARE:

At various times, HBO MAX may choose to make available updates, bug fixes, or other changes or enhancements to the Platform (collectively, **"Service Updates"**). By subscribing to the Platform, you consent to receive all Service Updates without further notice. Service Updates may be:

- (a) Automatic, such as in connection with general website changes and additional features or updates to data required by the Platform;
- (b) At your election, in which case you will receive information and instructions for how to authorize optional Service Updates; or
- (c) Mandatory, in which case you will be required to consent to the Service Update or install or upgrade a third-party plug-in to maintain access to the Platform.

Please note that the Platform may be unavailable during a Service Update.

HBOmax 3.6 SUSPENSION AND TERMINATION:

Any Subscription Provider may disable, suspend or terminate your Subscription and access to the Platform and/or your HBO Max Account immediately for any reason or for no reason whatsoever, including if any Subscription Provider reasonably determines that you have provided inaccurate account or payment details, you no longer meet the Eligibility Criteria or you are otherwise in violation of these Terms. If this occurs, you must stop using the Platform. If we disable your Subscription and/or access to all or any part of the Platform, you agree not to create another HBO Max Account or try to access the Platform without our permission.

3.7. CUSTOMER SERVICE:

(a) For Customer Service inquiries related to the Platform or your Subscription through HBO MAX (including Subscription Fee and Payment Method), please visit our Help Center at <https://help.hbomax.com>.

If you are within the U.S. Service Area and are unable to resolve your question by visiting our Help Center at <https://help.hbomax.com> or if you have reason to believe that your HBO Max Account credentials have been compromised or misappropriated in some way, please contact HBO Max Customer Support at 1-855-442-6629 or send us an email at support@hbomax.com.

If you are within the LATAM Service Area and are unable to resolve your question by visiting our Help Center at <https://help.hbomax.com> or if you have reason to believe that your HBO Max Account credentials have been compromised or misappropriated in some way, please contact HBO Max Customer



Support at 1-800-796-1616 or send us an email at
soporte@hbomax.com (Spanish), soporte@hbomax.com
(Portuguese), or supportca@hbomax.com (English - Caribbean).

If you are in the Europe Service Area and are unable to resolve your question by visiting our Help Center at <https://help.hbomax.com> or if you have reason to believe that your HBO Max Account credentials have been compromised or misappropriated in some way, please contact HBO Max Customer Support at our Contact Us Page: <https://help.hbomax.com/contactus>.

(b) For Customer Service matters related to your Subscription through a Subscription Provider other than HBO MAX (including Subscription Fee and Payment Method) or other matters relating to billing through your Subscription Provider, please contact your Subscription Provider directly.

(c) If you have specific concerns with the closed caption, please contact:

In the U.S. Service Area

Arthur Woo

WarnerMedia Direct, LLC

30 Hudson Yards

New York, NY 10001

E-mail: hbomaxclosedcaptioning@hbomax.com

Phone: 833-778-9212

HBOMAX In the LATAM Service Area

Arthur Woo

WarnerMedia Direct Latin America, LLC

30 Hudson Yards

New York, NY 10001

E-mail: hbomaxclosedcaptioning@hbomax.com

Phone: 833-778-9212

In the Western Europe Service Area

Arthur Woo

HBO Nordic AB

Kungsgatan 12

111 35 Stockholm, Sweden

E-mail: hbomaxclosedcaptioning@hbomax.com

In the Central and Eastern Europe Service Area

Arthur Woo

HBO Europe s.r.o.

Jankovcova 1037/49

170 00 Praha 7, Czech Republic

E-mail: hbomaxclosedcaptioning@hbomax.com

3.8. FEEDBACK, SUBMISSIONS, PHOTO UPLOAD AND POSTINGS:

Unsolicited Submissions

Photo Upload and Postings

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to a Kid's Profile. Postings do not reflect the views of HBO MAX and HBO MAX disclaims all responsibility and liability arising from the Postings.

You represent that (a) you have all necessary rights in all Postings you provide and all material, content and information they contain and that your Postings shall not violate or infringe upon any proprietary right, intellectual property right or other rights of third parties; (b) you will not upload or post any nudity, obscene materials, hate speech, or other objectionable, offensive, illegal, or otherwise harmful materials to the Platform, and (c) you will not upload or post any sensitive or confidential personal data as part of the Postings.

3.9. OUR COMMUNICATIONS TO YOU:

By using the Platform you acknowledge that we and our Subscription Providers can send you emails, text messages, in app notifications, push notifications or other electronic service communications about your account. To the extent permitted by applicable law, you also consent to receive electronic promotional messages, offers, surveys, and other materials. You understand that texts, calls or prerecorded messages may be generated by automatic telephone dialing systems. Agreeing to receive these promotional texts is not a condition of purchasing any goods or services. If at any time you no longer want to receive promotional communications, you can opt out by either:

- Unsubscribing by clicking on the link at the bottom of the electronic communication;
- For text messages, by responding STOP; or



Signing into the Platform and updating your "Notifications" preferences in "Settings". Changes made to your Notifications settings may not take effect immediately, and there could be a delay before your new settings become effective.

4. COPYRIGHTS AND TRADEMARKS

4.1. COPYRIGHTS AND TRADEMARKS:

The Platform, and all materials incorporated into the Platform are protected by copyrights, patents, trademarks, trade secrets or other legal rights. The copyright holders have licensed this Content for private use only and not for public or commercial exhibition.

This means that you may not (a) show any Content to any public audience or view it in a public location; or (b) attempt to circumvent, avoid, bypass, remove, deactivate, impair or otherwise defeat any encryption, rights signaling or copy protection technology for the Content. Unauthorized copying, editing, exhibition, broadcast or distribution of a copyrighted program can result in severe criminal and civil penalties under U.S. or any other applicable laws.

Some of the characters, logos or other images on the Platform are also protected as our registered or unregistered trademarks, trade names and/or service marks ("**Trademarks**"). All other trademarks are the property of their respective owners. Use of our Trademarks of anyone else's is not authorized other than as incorporated into the Platform.

We may gather data on Platform usage and other information to ensure that the Platform is being used in accordance with these Terms. You agree not to block this transmission of data. If you do



so, it will be considered a violation of these Terms and may result in immediate termination of your Subscription.

4.2. COPYRIGHT NOTICE:

If you believe that any content appearing on any part of the Platform has been copied in a way that constitutes copyright infringement under the laws of the United States, the countries within the LATAM Service Area, or the countries within the Europe Service Area, please forward the following information to the Copyright Agent named below:

- Your name, address, telephone number, and email address;
- A description of the copyrighted work that you claim has been infringed;
- The exact URL or a description of where the alleged infringing material is located;
- A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
- An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; and
- A statement by you that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

For the U.S. Service Area

WarnerMedia Direct, LLC



30 Hudson Yards

New York, NY 10001

Attn: Legal Department/Copyright Agent

E-mail: hbomaxcopyrightviolations@hbomax.com

For the LATAM Service Area

WarnerMedia Direct Latin America, LLC

30 Hudson Yards

New York, NY 10001

Attn: Legal Department/Copyright Agent

E-mail: hbomaxcopyrightviolations@hbomax.com

Please note that while HBO MAX seeks to preserve all exemptions from liability that may be available under the copyright law, this is not a stipulation that HBO MAX is a service provider as defined in 17 U.S.C. section 512c or elsewhere in the law.

For the Western Europe Service Area

HBO Nordic AB

Kungsgatan 12

111 35 Stockholm, Sweden

Attn: Legal Department/Copyright Agent

E-mail: hbomaxcopyrightviolations@hbomax.com

For the Central and Eastern Europe Service Area



HBO Europe s.r.o.

Jankovcova 1037/49

170 00 Praha 7, Czech Republic

Attn: Legal Department/Copyright Agent

E-mail: hbomaxcopyrightviolations@hbomax.com

4.3. RESTRICTIONS ON USE OF THE PLATFORM:

Please be aware that it is copyright infringement to make an unauthorized copy of any element or any portion of the Platform, including the Content, or underlying software.

You are only authorized to access and display Content on the Platform for your non-commercial, personal, entertainment use on compatible devices while your Subscription remains active and in good standing and only as permitted in these Terms. **You may not:**

- copy, reproduce, distribute, transfer, sell, license, publish, enter into a database, display, perform publicly, modify, create derivative works, upload, edit, post, link to, frame, transmit, rent, lease, lend or sublicense or in any way exploit any part of the Platform, or attempt to interfere with the operation of the Platform;
- use any data mining, robots, virus, worms, bugs, or other data gathering and extraction tools on the Platform, or frame any portion of the Platform, or attempt to tamper, hack, corrupt, or impair the administration and/or security of the Platform;
- use the Content files or other elements of the Platform to construct any kind of database;



reverse engineer, copy, decompile, disassemble, derive the source code of, modify, adapt, capture, reproduce, publicly display, publicly perform, transfer, sell, license, create derivative works from or based upon, republish, upload, edit, post, transmit, distribute, exploit, circumvent or otherwise translate, in whole or in part, the Platform or any Content, or attempt, or encourage or assist any other person, to take any of the above action; or

- circumvent, disable, or otherwise tamper with any security technology protecting any Content, system resources, accounts or any other part of the Platform, or to attempt or assist another person to do so. It is prohibited to use or distribute tools designed for compromising security (e.g. password guessing programs, cracking tools or network probing tools).

If HBO MAX authorizes you to copy any part of the Platform, this authorization is limited to viewing a single copy for non-commercial, personal, entertainment use only, and requires you to keep intact all copyright, trademark and other proprietary notices. Using any material on any other service or networked computer environment is prohibited.

5. ADDITIONAL LEGAL TERMS

To the greatest extent permitted by applicable law, the following additional legal terms shall apply:

5.1. DISCLAIMER OF WARRANTIES:

THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF

Limitation of Liability.

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DAMAGES YOU INCUR ARISING OUT OF THIS AGREEMENT ARE NOT IRREPARABLE AND ARE INSUFFICIENT TO ENTITLE YOU TO AN INJUNCTION OR OTHER EQUITABLE RELIEF RESTRICTING THE AVAILABILITY OF, OR ANY PERSON'S ABILITY TO ACCESS, ANY PORTION OF THE PLATFORM.

Time Limitations for Claims

TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM RELATING IN ANY WAY TO THE PLATFORM OR THESE TERMS MUST BE COMMENCED WITHIN ONE (1) YEAR OF THE EVENTS FIRST GIVING RISE TO THE CLAIM. IF NOT COMMENCED WITHIN THIS ONE (1) YEAR PERIOD, YOU AND HBO MAX ARE EACH PERMANENTLY BARRED FROM PURSUING THAT CLAIM.

5.3. INDEMNITY:

You agree to indemnify and hold harmless HBO MAX, the Subscription Provider(s), and their respective parents, subsidiaries, affiliates, partners, agents, and licensors and the officers, directors, employees, members and shareholders of all of the foregoing (collectively, the **"Indemnified Parties"**), from and against all third party claims, losses, expenses, damages and costs, including reasonable attorney fees, resulting from your actual or alleged breach of these Terms.

You will cooperate as fully and as reasonably required in HBO MAX's defense of any claim. HBO MAX reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and you shall not in any event settle any such matter without HBO MAX's written consent.

5.4 DISPUTE RESOLUTION:

We endeavor to resolve subscriber concerns as quickly as possible. Please contact HBO Max Customer Support for your Service Area as described in Section 3.7.

For subscribers residing in the U.S. Service Area and the LATAM Service Area (excluding Brazil), in the unlikely event that you're not satisfied with customer service's solution and you and HBO Max are unable to resolve a dispute through the Informal Dispute Resolution Procedures below, we each agree to resolve the dispute through binding arbitration or small claims court instead of in courts of general jurisdiction.

Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Unless expressly limited by this arbitration provision, arbitrators can award the same damages and relief that a court can award. **Any arbitration under this Agreement will take place on an individual basis; class arbitrations and class actions are not permitted.** In arbitration you may be entitled to recover attorneys' fees from us to the same extent as you would be in court.

ARBITRATION AGREEMENT

(a) Claims Subject to Arbitration: To the fullest extent permitted by applicable law, HBO Max and you agree to arbitrate **all disputes and claims** between us, except for claims arising from bodily injury or that pertain to enforcing, protecting, or the validity of your or our intellectual property rights (or the intellectual property rights of any of our licensors, affiliates and partners). This Arbitration



Agreement is intended to be broadly interpreted. It includes, but is not limited to:

- claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, fraud, misrepresentation or any other statutory or common-law legal theory;
- claims that arose before this or any prior Agreement (including, but not limited to, claims relating to advertising);
- claims for mental or emotional distress or injury not arising out of physical bodily injury;
- claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and
- claims that may arise after the termination of this Agreement.

References to "HBO Max," "you," "we" and "us" in this Arbitration Agreement include our respective predecessors in interest, successors, and assigns, as well as our respective past, present, and future parents, subsidiaries, and affiliates (including Warner Bros. Discovery, Inc. and its affiliates); those entities and our respective agents, employees, licensees, licensors, and providers of Content as of the time your or our claim arises; and all authorized or unauthorized users or beneficiaries of the Platform under this or prior Agreements between us. Notwithstanding the foregoing, either party may elect to have claims heard in small claims court seeking only individualized relief, so long as the action is not removed or appealed to a court of general jurisdiction. This



Arbitration Agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies. **You agree that, by entering into this Agreement, you and we are each waiving the right to a trial by jury or to participate in a class action and to a trial by jury to the fullest extent permitted by applicable law.** This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act (9 U.S.C. §§ 1-16) governs the interpretation and enforcement of this arbitration provision. This Arbitration Agreement shall survive termination of your subscription or this Agreement.

(b) Mandatory Pre-Arbitration Notice and Informal Dispute

Resolution Procedures: You and we agree that good-faith, informal efforts to resolve disputes often can result in a prompt, cost-effective, and mutually beneficial outcome. Therefore, a party who intends to initiate arbitration or file a claim in small claims court must first send to the other a written Notice of Dispute ("**Notice**"). A Notice from you to HBO Max must be emailed to notice@wbd.com ("**Notice Address**"). A Notice to you by HBO Max must be sent to the email address associated with your HBO Max subscription. Any Notice must include (i) the claimant's name, address, and email address; and (if different) the email address associated with the relevant HBO Max subscription; (ii) if you are submitting the Notice, how and when you became a subscriber, your subscription history, and current subscription status; (iii) a description of the nature and basis of the claim or dispute; , including any relevant facts, and if you are submitting the Notice, facts pertaining to your use of HBO Max and the platform(s) on which you watch it (e.g., via connected TV, iPhone, desktop); (iv) a description of the nature and basis of the specific relief sought,



including the damages sought, if any, and a detailed calculation for them; (v) a personally signed statement from the claimant (and not their counsel) verifying the accuracy of the contents of the Notice; and (vi) if you are the claimant and are represented by counsel, your signed statement authorizing HBO Max to disclose your HBO Max Account details to your attorney while seeking to resolve your claim. The Notice must be individualized, meaning it can only concern only your dispute and no other person's dispute.

After receipt of a completed Notice, the parties shall engage in a good faith effort to resolve the dispute for a period of 60 days (which can be extended by agreement). You and we agree that, after receipt of the completed Notice, the recipient may request an individualized telephone or video settlement conference (which can be held after the 60-day period) and both parties will personally attend (with counsel, if represented). You and we agree that the parties (and counsel, if represented) shall work cooperatively to schedule the conference at the earliest mutually-convenient time and to seek to reach a resolution. If we and you do not reach an agreement to resolve the issues identified in the Notice within 60 days after the completed Notice is received (or a longer time if agreed to by the parties), you or we may commence an arbitration proceeding or a small claims court proceeding (if permitted by small claims court rules).

Compliance with this Mandatory Pre-Arbitration Notice and Informal Dispute Resolution Procedures section is a condition precedent to initiating arbitration. Any applicable limitations period (including statute of limitations) and any filing fee deadlines shall be tolled while the parties engage in the informal dispute resolution procedures set forth in this Subsection 5.4(b). All of the



Mandatory Pre-Arbitration Notice and Informal Dispute Resolution Procedures are essential so that you and HBO Max have a meaningful opportunity to resolve disputes informally. If any aspect of these requirements has not been met, a court of competent jurisdiction may enjoin the filing or prosecution of an arbitration. In addition, unless prohibited by law, the arbitration administrator may not accept, administer, assess, or demand fees in connection with an arbitration that has been initiated without completion of the Notice and Informal Dispute Resolution Procedures. If the arbitration is already pending, it shall be administratively closed. Nothing in this paragraph limits the right of a party to seek damages for non-compliance with these Procedures in arbitration.

(c) Arbitration Procedure: The arbitration will be governed by applicable rules of National Arbitration & Mediation ("NAM") (including the Comprehensive Dispute Resolution Rules and Procedures and/or the Supplemental Rules for Mass Arbitration Filings, as applicable) ("NAM Rules"), as modified by this Arbitration Agreement, and will be administered by the NAM. (If the NAM is unavailable or unwilling to do so, another arbitration provider shall be selected by the parties that will do so, or if the parties are unable to agree on an alternative administrator, by the court pursuant to 9 U.S.C. § 5.) The NAM Rules are available online at <https://www.namadr.com/> by calling NAM at 1-800-358-2550, or by requesting them in writing at the Notice Address. You may obtain a form to initiate arbitration at: <https://www.namadr.com/content/uploads/2020/09/ComprehensDemand-for-Arb-revised-9.18.19.pdf> or by contacting NAM.

You and we agree as otherwise expressly provided herein and except as to the party initiating arbitration must submit a



certification that they have complied with and completed the Notice and Informal Dispute Resolution requirements referenced in section (b) and that they are a party to the Arbitration Agreement enclosed with or attached to the demand for arbitration. The demand for arbitration and certification must be personally signed by the party initiating arbitration (and their counsel, if represented).

All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the Arbitration Agreement or whether a dispute can or must be brought in arbitration (including whether a dispute is subject to this Arbitration Agreement or a previous arbitration provision between you and HBO Max), which are for a court of competent jurisdiction to decide. The arbitrator may consider but shall not be bound by rulings in other arbitrations involving different customers.

Unless we and you agree otherwise, or the applicable NAM Rules dictate otherwise, any arbitration hearings will take place in the county (or parish) of your billing address and you and an HBO Max representative required to attend in person. At the conclusion of the arbitration proceeding, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based.

The arbitrator's decision is binding only between you and HBO Max and will not have any preclusive effect in another arbitration or proceeding that involves a different party. An arbitrator's award that has been fully satisfied shall not be entered in any court.

As in court, you and HBO Max agree that any counsel representing a party in arbitration certifies when initiating and proceeding in



arbitration that they are complying with the requirements of Federal Rule of Civil Procedure 11(b), including certification that the claim or relief sought is neither frivolous nor brought for an improper purpose. The arbitrator is authorized to impose any sanctions under the NAM Rules, Federal Rule of Civil Procedure 11, or applicable federal or state law, against all appropriate represented parties and counsel.

Except as expressly provided in the Arbitration Agreement, the arbitrator may grant any remedy, relief, or outcome that the parties could have received in court, including the awards of attorneys' fees and costs in accordance with applicable law. Unless otherwise provided by applicable law, the parties shall bear their own attorneys' fees and costs in arbitration unless the arbitrator awards sanctions or finds that either the substance of the claim, the defense, or the relief is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b))

(d) Arbitration Fees: The payment of arbitration fees (the fees imposed by the arbitration administrator including filing, arbitrator, and hearing fees) will be governed by the applicable NAM Rules, unless you qualify for a fee waiver under applicable law. If after exhausting any potentially available fee waivers, the arbitrator finds that the arbitration fees will be prohibitive for you as compared to litigation, we will pay as much of your filing, arbitrator, and hearing fees in the arbitration as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive, regardless of the outcome of the arbitration, unless the arbitrator determines that your claim(s) were frivolous or brought for an improper purpose or asserted in bad faith. You and we agree that



arbitration should be cost-effective for all parties and that any party may engage with NAM to address the reduction or deferral of fees.

(e) Confidentiality: Upon either party's request, the arbitrator will issue an order requiring that confidential information of either party disclosed during the arbitration (whether in documents or orally) may not be used or disclosed except in connection with the arbitration or a proceeding to enforce the arbitration award and that any permitted court filing of confidential information must be done under seal to the furthest extent permitted by law.

(f) Offer of Settlement: In any arbitration between you and HBO Max, the defending party may, but is not obligated to, make a written settlement offer at any time before the evidentiary hearing or, if a dispositive motion is permitted, prior to the dispositive motion being granted. The amount or terms of any settlement offer may not be disclosed to the arbitrator until after the arbitrator issues an award on the claim. If the award is issued in the other party's favor and is less than the defending party's settlement offer or if the award is in the defending party's favor, the other party must pay the defending party's costs incurred after the offer was made, including any attorney's fees. If any applicable statute or case law prohibits the shifting of costs incurred in the arbitration, then the offer in this provision shall serve to cease the accumulation of any costs to which the party bringing the claim may be entitled for the cause of action under which it is suing.

(g) Requirement of Individualized Relief: The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. **TO THE FULLEST EXTENT**



PERMITTED BY APPLICABLE LAW, YOU AND WE AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR OUR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL PROCEEDING. Further, unless both you and we agree otherwise, the arbitrator may not consolidate more than one person's claims and may not otherwise preside over any form of a representative, class, or private attorney general proceeding. If, after exhaustion of all appeals, any of these prohibitions on non-individualized declaratory or injunctive relief; class, representative, and private attorney general claims; and consolidation are found to be unenforceable with respect to a particular claim or with respect to a particular request for relief (such as a request for injunctive relief sought with respect to a particular claim), then the parties agree such a claim or request for relief shall be decided by a court of competent jurisdiction, after all other arbitrable claims and requests for relief are arbitrated. You agree that any arbitrations between you and HBO Max will be subject to this Section 5.4 and not to any prior arbitration agreement you had with HBO Max, and, notwithstanding any provision in this Agreement to the contrary, you agree that this Section 5.4 amends any prior arbitration agreement you had with HBO Max, including with respect to claims that arose before this or any prior arbitration agreement.

(h) Opt Out of Future Changes: Notwithstanding any provision to the contrary, if HBO Max makes any future change to this Arbitration Agreement (other than a change to the Notice Address), you may reject any such change by sending HBO Max an email from the email address associated with your HBO Max



subscription to notice@wbd.com within 30 days of notice of the change that provides: (i) your full legal name, (ii) your complete mailing address, (iii) your phone number, (iv) if applicable, the username or email address associated with any potential account or newsletter; and (v) when and how you subscribed to HBO Max. Such an opt-out email must be sent by you personally, and not by your agent, attorney, or anyone else purporting to act on your behalf. It must include a statement, personally signed by you, that you wish to reject the change to the Arbitration Agreement. This is not an opt out of arbitration altogether.

(i) Mass Filing: If, at any time, 25 or more claimants (including you) submit Notices or seek to file demands for arbitration raising similar claims against the other party or related parties by the same or coordinated counsel or entities, consistent with the definition and criteria of Mass Filings ("Mass Filing") set forth in NAM's Mass Filing Supplemental Dispute Resolution Rules and Procedures ("NAM's Mass Filing Rules," available at <https://www.namadr.com/resources/rules-fees-forms/>), you and we agree that the additional procedures set forth below shall apply. The parties agree that throughout this process, their counsel shall meet and confer to discuss modifications to these procedures based on the particular needs of the Mass Filing. The parties acknowledge and agree that by electing to participate in a Mass Filing, the adjudication of their dispute might be delayed. Any applicable limitations period (including statute of limitations) and any filing fee deadlines shall be tolled beginning when the Pre-Arbitration Notice and Informal Dispute Resolution Procedures are initiated, so long as the pre-arbitration Notice complies with the requirements in Section 5.4(b), until your claim is selected to



proceed as part of a staged process or is settled, withdrawn, otherwise resolved, or opted out of arbitration.

- **Stage One:** Counsel for the claimants and counsel for HBO Max shall each select 25 claims per side (50 claims total) to be filed and to proceed in individual arbitrations as part of a staged process. Each of these individual arbitrations shall be assigned to a different, single arbitrator unless the parties agree otherwise in writing. Any remaining claims shall not be filed or deemed filed in arbitration, nor shall any arbitration fees be assessed in connection with those claims unless and until they are selected to be filed in individual arbitration proceedings as part of a staged process. After this initial set of staged proceedings is completed, the parties shall promptly engage in a global mediation session of all remaining claims with a retired federal or state court judge and HBO Max shall pay the mediator's fee.
- **Stage Two:** If the remaining claims are not resolved at this time, counsel for the claimants and counsel for HBO Max shall each select 50 claims per side (100 claims total) to be filed and to proceed in individual arbitrations as part of a second staged process, subject to any procedural changes the parties agreed to in writing. Each of these individual arbitrations shall be assigned to a different, single arbitrator unless the parties agree otherwise in writing. Any remaining claims shall not be filed or deemed filed in arbitration, nor shall any arbitration fees be assessed in connection with those claims unless and until they are selected to be filed in individual arbitration



proceedings as part of a staged process. After this second set of staged proceedings is completed, the parties shall promptly engage in a global mediation session of all remaining claims with a retired federal or state court judge and HBO Max shall pay the mediator's fee.

- **Stage Three:** If the remaining claims are not resolved at this time, counsel for the claimants and counsel for HBO Max shall each select 100 claims per side (200 claims total) to be filed and to proceed in individual arbitrations as part of a third staged process, subject to any procedural changes the parties agreed to in writing. Any remaining claims shall not be filed or deemed filed in arbitration, nor shall any arbitration fees be assessed in connection with those claims unless and until they are selected to be filed in individual arbitration proceedings as part of a staged process. Following this third set of staged proceedings, counsel for claimants may elect to have the parties participate in a global mediation session of all remaining claims with a retired federal or state court judge.

If your claim is not resolved as part of the staged process identified above, either:

- **Option One:** You and HBO Max may separately or by agreement, opt out of arbitration and elect to have your claim heard in court consistent with the Agreement. You may opt out of arbitration by providing your individual, personally signed notice of your intention to opt out by sending HBO Max an email from the email address associated with your HBO Max subscription to



notice@wbd.com. Such an opt-out email must be sent by you personally, and not by your agent, attorney, or anyone else purporting to act on your behalf. It must include a statement, personally signed by you, that you wish to opt out of arbitration within 30 days after the conclusion of Stage 3 or the elective mediation associated with Stage 3. HBO Max may opt your claim out of arbitration by sending an individual, personally signed notice of its intention to opt out to your counsel within 14 days after the expiration of your 30 day opt out period. Counsel for the parties may agree to adjust these deadlines.

OR

- **Option Two:** If neither you nor HBO Max elect to have your claim heard in court consistent with Option One, then you agree that your claim will be resolved as part of continuing, staged individual arbitration proceedings as set forth below. Assuming the number of remaining claims exceeds 200, then 200 claims shall be randomly selected (or selected through a process agreed to by counsel for the parties) to be filed and to proceed in individual arbitrations as part of a staged process. If the number of remaining claims is fewer than 200, then all of those claims shall be filed and proceed in individual arbitrations. Any remaining claims shall not be filed or deemed filed in arbitration, nor shall any arbitration fees be assessed in connection with those claims unless and until they are selected to be filed in individual arbitration proceedings as part of a staged process. After each set of 200 claims are adjudicated, settled, withdrawn, or otherwise



resolved, this process shall repeat consistent with these parameters. Counsel for the parties are encouraged to meet and confer, participate in mediation, and engage with each other and with NAM (including through a Procedural Arbitrator) to explore ways to streamline the adjudication of claims, increase the number of claims to proceed at any given time, promote efficiencies, conserve resources, and resolve the remaining claims.

A court of competent jurisdiction shall have the authority to enforce these Mass Filing provisions and, if necessary, to enjoin the mass filing, prosecution, or administration of arbitrations and the assessment of arbitration fees. If these additional procedures apply to your claim, and a court of competent jurisdiction determines that they are not enforceable as to your claim, then your claim shall proceed in a court of competent jurisdiction consistent with this Agreement.

You and HBO Max agree that we each value the integrity and efficiency of arbitration and wish to employ the process for the fair resolution of genuine and sincere disputes between us. You and HBO Max acknowledge and agree to act in good faith to ensure the processes set forth herein are followed. The parties further agree that application of these Mass Filing procedures have been reasonably designed to result in an efficient and fair adjudication of such cases.

(j) Severability: If any portion of this Arbitration Agreement is found to be void, invalid, or otherwise unenforceable, then that portion shall be deemed to be severable and, if possible, superseded by a valid, enforceable provision, or portion thereof, that matches the intent of the original provision, or portion thereof, as closely as



possible. The remainder of this Arbitration Agreement shall continue to be enforceable and valid according to the terms contained herein.

For subscribers residing in Brazil

This Section 5.4 shall be written and interpreted under Brazilian law. In the event of any dispute, claim, or controversy, you and HBO MAX hereby agree to resolve those disputes, amicably. Accordingly, you must first send an e-mail to us describing in detail any such dispute, claim, or controversy between you and HBO MAX ("**BR Notice**"). The BR Notice should be sent to the email address suporte@hbomax.com. The BR Notice must (a) provide your name and email address; (b) describe the nature and basis of your claim or dispute, and (c) describe your specific request for resolution. If you and HBO MAX do not reach an agreement to resolve the dispute within 30 days after receipt of notification by HBO MAX, you can then initiate legal proceedings on the matters raised in the BR Notice.

For subscribers residing in the Europe Service Area

In the event of any dispute, claim, or controversy, you and HBO MAX hereby agree to resolve those disputes, amicably. Accordingly, you must first send an e-mail to us describing in detail any such dispute, claim, or controversy between you and HBO MAX ("**Europe Notice**"). The Europe Notice should be sent to the email address identified in Section 3.7 (Customer Service) for the applicable region in the Europe Service Area. The Europe Notice must (a) provide your name and email address; (b) describe the nature and basis of your claim or dispute, and (c) describe your specific request for resolution. If you and HBO MAX do not reach an



agreement to resolve the dispute within 30 days after receipt of notification by HBO MAX, you can then initiate legal proceedings on the matters raised in the Europe Notice. The dispute shall be resolved by a competent court of law and shall be subject to Swedish law for Western Europe Service Area or shall be subject to the Czech law for Central and Eastern Europe Service Area, unless the law applicable in your Home Country is more beneficial to you. As a consumer, you have the right to refer the matter to a court of law where you reside. You may also choose to make a complaint in the first instance to the relevant consumer protection agency in the Europe Service Area or to the relevant EU or national board/authority for consumer disputes, which can be found here at <https://help.hbomax.com/cpa> or, you can go to <https://ec.europa.eu/consumers/odr> to resolve a consumer dispute out of court online.

5.5. CLASS ACTION AND JURY TRIAL WAIVER:

You and HBO Max agree that, to the fullest extent permitted by law, each party may bring claims (whether in court or in arbitration) against the other only in an individual capacity, and not participate as a plaintiff, claimant, or class member in any class, collective, consolidated, private attorney general, or representative proceeding. This means that you and HBO Max may not bring a claim on behalf of a class or group and may not bring a claim on behalf of any other person unless doing so as a parent, guardian, or ward of a minor or in another similar capacity for an individual who cannot otherwise bring their own individual claim. This also means that you and HBO Max may not participate in any class, collective, consolidated, private attorney general, or representative proceeding brought by any third party.



Notwithstanding the foregoing, you or HBO Max may participate in a class-wide settlement.

To the fullest extent permitted by law, you and HBO Max waive any right to a jury trial.

5.6. INVESTIGATIONS:

HBO MAX may investigate suspected violations of this Agreement. As part of such an investigation, HBO MAX may gather information from you and take appropriate steps to address any such violations. We will collect and use any such information in accordance with the HBO Max Privacy Policy.

5.7. HYPERLINKS TO AND FROM THIRD PARTY SITES:

The Platform may link you to other sites on the internet including, without limitation, sites owned or controlled by HBO MAX or by our Subscription Providers. These other sites are not under the control of HBO MAX, and you acknowledge that (whether or not these sites are affiliated in any way with HBO MAX or its Subscription Providers) HBO MAX is not responsible for the accuracy, copyright compliance, legality, decency, or any other aspect of these sites.

5.8. THIRD PARTY SUBSCRIPTION PROVIDER TERMS:

These Terms, together with the additional conditions of your Subscription, constitute an agreement between you and HBO MAX, and not between you and any other Subscription Provider(s). Unless otherwise specified in these Terms, Subscription Providers will have no obligation to provide technical maintenance for the Platform or respond to product claims regarding the Platform. Subscription Providers are not responsible for any product or intellectual property claims associated with the Platform. Please



review your Subscription Provider's terms of use and user agreements to confirm your compliance with those terms.

iOS Subscribers

You must comply with the App Store Terms of Use in addition to these Terms when accessing the Platform via iOS products. You acknowledge and agree that Apple, Inc., ("**Apple**") and any subsidiaries of Apple, are third party beneficiaries to these Terms. Upon your acceptance of these Terms, Apple will have the right (and be deemed to have accepted the right) to enforce these Terms as a third-party beneficiary.

5.9. USE IN SERVICE AREA ONLY:

The Platform is intended for viewing solely within the Service Area. You are prohibited from using any technology to mask your location or hinder HBO Max's ability to determine your location. HBO Max may use technologies to verify your geographic location.

The HBO Max entity that provides you access to the Platform varies by Service Area as follows:

U.S. Service Area

The U.S. Service Area includes the U.S., the District of Columbia and the following U.S. territories: American Samoa, Guam, Puerto Rico, The Northern Mariana Islands, and the U.S. Virgin Islands.

U.S. Service Area Contact Information:

WarnerMedia Direct, LLC

30 Hudson Yards



New York, NY 10001

LATAM Service Area

The LATAM Service Area includes Anguilla, Antigua and Barbuda, Argentina, Aruba, Bahamas, Barbados, Belize, Bolivia, Brazil, British Virgin Islands, Cayman Islands, Chile, Colombia, Costa Rica, Curaçao, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Montserrat, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, St. Lucia, St. Vincent and The Grenadines, Suriname, Trinidad and Tobago, Turks and Caicos, Uruguay, and Venezuela.

LATAM Service Area Contact Information:

WarnerMedia Direct Latin America, LLC

30 Hudson Yards

New York, NY 10001

Western Europe Service Area

The Western Europe Service Area includes Andorra, Denmark, Finland, Norway, Spain, Sweden, Portugal, and the Netherlands.

Western Europe Service Area Contact Information:

HBO Nordic AB

Kungsgatan 12

111 35 Stockholm

Sweden

Central and Eastern Europe Service Area



The Central and Eastern Europe Area includes Bulgaria, Bosnia Herzegovina, Croatia, Czech Republic, Hungary, North Macedonia, Moldova, Montenegro, Poland, Romania, Serbia, Slovakia and Slovenia.

Central and Eastern Europe Service Area Contact Information:

HBO Europe s.r.o.

Jankovcova 1037/49

170 00 Praha 7, Czech Republic

The Western Europe Service Area and the Central and Eastern Europe Service Area is referred to herein as the Europe Service Area.

5.10. GOVERNING LAW AND VENUE:

These Terms shall be governed by the laws of the State of New York, without regard to conflict of law principles. Any dispute that is not subject to arbitration under Section 5.4 (Dispute Resolution) of the Agreement, or any issues involving arbitrability or enforcement of any provisions under Section 5.4 shall be brought in the appropriate state or federal court located in New York County, New York; and we and you each irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts in New York County, New York for the adjudication of all non-arbitral claims.

For subscribers residing in the Europe Service Area these Terms shall be governed by the laws described in the "For subscribers residing in the Europe Service Area" paragraph of Section 5.4.

5.11. FORCE MAJEURE:

HBO MAX shall not have any liability to you by reason of any delay or failure to perform any obligation under these Terms if the delay or failure to perform is occasioned by force majeure, which shall refer to any act of God, storm, fire, casualty, unanticipated work stoppage, power outage, satellite failure, strike, lockout, labor dispute, civil disturbance, riot, war, public health emergency, epidemic, pandemic or national emergency, Governmental action, or other cause beyond our control.

5.12. EXPORT CONTROLS; OFAC COMPLIANCE:

You may not use or otherwise export or re-export the software except as authorized by United States law and the laws of the jurisdiction in which the software was obtained. In particular, but without limiting the generality of the foregoing, the software and other relevant elements of the Platform may not be exported or re-exported into any U.S. embargoed countries or to any countries prohibited by U.S. laws, rules or regulations.

By accessing the Platform, you confirm that you are not subject to sanctions imposed by the U.S. and you are not considered by the Office of Foreign Assets Control (OFAC) to be a specially designated national.

5.13. WHAT HAPPENS IF WE CHANGE THESE TERMS:

We reserve the right to modify these Terms, the fees, additional conditions of your Subscription or change any part of the Platform at any time. We will communicate material changes to these Terms by making the revised Terms available for your review on the Platform. If you access the Platform through a mobile device, we



may also communicate changes through updated versions of the Platform software. The date that these Terms were last modified can be found at the end of these Terms. The modified Terms will become effective and govern your use of the Platform upon the date and time they are posted to the Platform.

If any change materially limits the availability of the Platform, then in addition to posting the revised Terms on the Platform, if required by applicable law, we will communicate this limitation by sending an email to the address associated with your HBO Max Account. So, it is important that you keep your HBO Max Account information up to date.

By continuing to use the Platform after any revised Terms come into effect and, in the case of any Subscription, your decision not to cancel your Subscription before it renews or within any relevant notice period, means you agree to be bound to the changes.

If you are in Europe Service Area, we will communicate, to the extent required by applicable laws, changes to these Terms and any additional conditions of your Subscription, including price increases, to the email address provided by you. Such changes will be communicated to you a reasonable time in advance, and you will be entitled to terminate your Subscription with effect on the day upon which such change will take effect.

5.14. ADDITIONAL TERMS AND CONDITIONS:

You may have to accept additional terms and conditions in order to use certain features offered through the Platform. If there is a conflict or inconsistency between those additional terms and these Terms, those additional terms will prevail solely with respect to your use of the particular feature to which they apply.



5.15. MISCELLANEOUS:

This Agreement, together with the additional conditions of your Subscription, constitute the entire agreement between you and HBO MAX with respect to this subject matter and supersede all prior or contemporaneous written or oral agreements between you and us with respect to this subject matter. These Terms may not be amended, nor any obligation waived, without our written authorization.

Last updated: 12/20/2022

[PRIVACY POLICY](#)

[TERMS OF USE](#)

[Do Not Sell My Personal Information](#)

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EXHIBIT 2



If any provision of these Terms is determined by a court to be unlawful, void or for any reason unenforceable, then that provision is deemed severable from these



Terms and shall not affect the validity and enforceability of any remaining provisions.

1. ABOUT THESE TERMS

These Terms, together with the additional conditions of your “Subscription” (as defined in [Section 2.2](#)), constitute a legally binding agreement between you and WarnerMedia Direct, LLC, the entity providing you with access to the Max “Platform” (as defined below), or one of its subsidiaries or affiliates (collectively, “**Max**,” “**us**,” “**we**” or “**our**”) and govern your use of the Max Platform. The programming, promotional materials and other content that is available through the Max Platform is referred to as “**Content**.” This Content along with all other elements of the Max Platform including its features, functionality, user interface, software, and all associated mobile application(s), user communications, website(s) (such as <https://max.com>) and other technology platforms are collectively referred to in these Terms as the “**Platform**.” The Platform provides you with access to the Content streamed over the internet to compatible devices. References to “you” in these Terms may also include any “Authorized Users” (as defined in [Section 2.2](#)). Your access or use of the Platform confirms that you have read, understood and agreed to this Agreement on behalf of yourself and on behalf of any Authorized Users. Our [Privacy Policy](#) describes how we treat your personal information and how we communicate with you and can be viewed at <https://www.max.com/privacy>. Our [Children’s Privacy Policy](#) (available at <https://www.max.com/privacy/children>) describes how we handle any personal information collected via a “Kid’s Profile” (as defined in [Section 2.2](#)).

2. SETTING UP YOUR MAX ACCOUNT AND SUBSCRIPTION

2.1. WHO CAN SUBSCRIBE TO THE PLATFORM:



to meet the following criteria (the “**Eligibility Criteria**”) to subscribe to the Platform: (a) reside within one of the fifty (50) states of the United States of America (“**U.S.**”), the District of Columbia or certain U.S. territories as set forth in [Section 5.9](#) (the “**Service Area**”); and (b) be at least eighteen (18) years old. If you are below eighteen (18) years old, you may use the Platform only as an Authorized User of a parent or legal guardian’s “Max Account” (as defined in [Section 2.2](#)).

2.2. CREATING YOUR MAX ACCOUNT AND PURCHASING A SUBSCRIPTION:

To access Content on Max, you must have a Max account (a “**Max Account**”), and you must have an active subscription plan (a “**Subscription**”) with a valid payment method (a “**Payment Method**”) either (a) directly through us or (b) through a third party (e.g., an app store or your internet, mobile or TV provider) that has been authorized to provide Subscriptions to the Platform (each, a “**Third Party Provider**”). As used in this Agreement, the term “Subscription Provider” refers to us and each Third Party Provider, individually and collectively.

Steps to Create a Max Account

If you purchase your Subscription directly through us, you will create your Max Account at the same time you make your initial purchase. If you purchase your Subscription through a Third Party Provider, you may need to take additional steps to set up your Max Account, including leaving your Third Party Provider’s platform to confirm your information with us.

Your Subscription will be automatically validated each time you sign in to the Platform. However, you will have to connect your Subscription to your Max Account if you enter into a new Subscription with a different Subscription Provider.

Purchasing a Subscription Directly Through Us

You may purchase a Subscription directly through us. Either we or our authorized vendor(s) (the “**Payment Service**”) will process the Payment Method. You should



address any payment questions to Max Customer Support as described in [Section 3.7](#). After your original Subscription ends, it will automatically renew at the then-current rates unless you cancel before the renewal. Renewal charges will be applied to the Payment Method associated with your Max Account. By providing a Payment Method to us, you agree that we and/or our Payment Service are authorized to periodically charge the applicable Subscription fee together with any applicable taxes and service fees (collectively, the **"Subscription Fee"**) on a recurring basis until you duly cancel your Subscription. We and/or our Payment Service will attempt to verify the Payment Method you provide, and may do this by processing an authorization hold, which is a standard practice. If your Payment Method expires and you do not update your Payment Method or duly cancel your Subscription before it automatically renews, you authorize us and/or our Payment Service to continue billing, and you will remain responsible for any uncollected amounts. If a valid Payment Method is not activated on your Max Account when a payment becomes due, we may restrict, suspend or cancel your Subscription.

Purchasing a Subscription Through a Third Party Provider

If you purchase a Subscription through a Third Party Provider, your Third Party Provider will process your Payment Method and give you further details on how to sign in or create your Max Account. If you have questions about payments through your Third Party Provider, please contact your Third Party Provider directly.

Multiple Subscription Offerings and Plan Switching

You may be offered multiple Subscription plans to access the Platform. The pricing and offers for Subscriptions to the Platform may vary by Subscription Provider and may change over time without notice (except as may be required by applicable law). Each Subscription plan may offer different Content availability, functionality, features, device compatibility or have certain conditions or limitations, which will be disclosed during your sign-up or in other materials available on the Platform. Subject to availability with your Subscription Provider, you may be able to change your Subscription from one plan to another. Additional terms applicable to the switching of a Subscription plan (such as the applicable charges and changes to billing dates) will be provided by your Subscription Provider.

max

Authorized Users

You will have the option to create up to five (5) authorized user profiles on your Max Account (each, an “**Authorized User**”). We may limit the maximum number of Authorized Users you can add or that can simultaneously use the Platform. Authorized Users are limited to members of your household.

If you are a parent or legal guardian and would like to make your minor child (users aged seventeen (17) and under) an Authorized User, you can create a profile that includes ratings restrictions and additional privacy protections (“**Kid’s Profile**”) to help control what Content your minor child is allowed to view on the Platform. You are responsible for monitoring whether your minor child uses the Kid’s Profile. Please review the Parental Controls information in [Section 3.3](#) below to learn how to customize the Content on your Max Account for each Kid’s Profile. By allowing your minor child to access your Max Account and/or by adding a Kid’s Profile, you represent and warrant that you are the parent or legal guardian of each minor child accessing the Max Account and/or affiliated with the Kid’s Profile and that you have the authority to consent to this Agreement, for yourself and each Authorized User, including any Authorized User who is a minor child.

Your Max Account will function as the “master account” for all Authorized Users. EACH AUTHORIZED USER’S VIEWING ACTIVITY MAY BE ACCESSIBLE TO YOU AS THE MAX ACCOUNT HOLDER, INCLUDING STREAMS BY TITLE, PARENTAL CONTROLS AND ANY CHANGES TO THE AUTHORIZED USER SETTINGS. IT IS YOUR RESPONSIBILITY TO INFORM EACH AUTHORIZED USER OF THIS FEATURE.

You are responsible for all activity by each Authorized User and for any other activity under your Max Account, including the devices that are used to access the Platform. You are solely responsible for maintaining the confidentiality of your Max Account email, password, “Profile PIN” (as defined in [Section 3.3](#)) and “Parent Code” (as defined in [Section 3.3](#)), as applicable. In addition, to prevent unauthorized access to your Max Account or the Platform, you and each Authorized User must maintain control over the devices used to access the Platform, not permit any unauthorized user to access your Max Account and not reveal your email, password or Payment Method to anyone.



2.3. FREE TRIALS AND PROMOTIONAL OFFERS:

Free Trials

From time to time, Subscription Providers may make certain Subscription plans on the Platform available to you on a free trial basis for a limited time (each, a “**Trial Subscription**”). The duration of each Trial Subscription will be specified at sign-up. Trial Subscriptions are limited to new Platform subscribers, unless otherwise specified. Your status as a new subscriber to the Platform will be determined by your Subscription Provider. This Agreement applies to any Trial Subscription, unless otherwise specified.

At the time of signing up for a Trial Subscription, you must provide a valid Payment Method in order to use the Platform during the Trial Subscription period. Your Payment Method will not be charged during the Trial Subscription period.

UNLESS YOU TIMELY CANCEL YOUR TRIAL SUBSCRIPTION BEFORE THE END OF YOUR FREE TRIAL, YOUR TRIAL SUBSCRIPTION WILL CONVERT TO A PAID SUBSCRIPTION AT THE END OF YOUR FREE TRIAL, AND THE APPLICABLE SUBSCRIPTION FEE WILL BE CHARGED TO YOUR PAYMENT METHOD.

If you are on a Trial Subscription directly through us, to find additional details about your Trial Subscription, including the date the Trial Subscription ends, please visit the “Subscription” setting in your Max Account for the latest information contained in our records, or if you are on a Trial Subscription through a Third Party Provider, contact that Third Party Provider directly.

Promotional Offers

From time to time, Subscription Providers may make certain Subscription plans available to you on a discounted basis or in conjunction with a promotion (each, a “**Promotional Offer**”). Promotional Offers may take a variety of forms and may be available on a standalone basis or provided as part of a bundle with other products or services.



In the event of a new/subsequent Promotional Offer after you sign-up for the Platform, no retrospective refunds, adjustments or price protection will be applied

to your Subscription Fee. New customers may take advantage of any “new customer” promotion only once. Requirements for a Promotional Offer will be stated at the time it is presented. Each Subscription Provider will determine Promotional Offer eligibility in its sole discretion, and reserves the right to limit the availability of, end or revoke a Promotional Offer.

You agree not to register multiple times for the same promotional offer using multiple names, addresses, email addresses or other means.

If a Subscription Provider offers you a Trial Subscription or other Promotional Offer for a Subscription, the specific terms of the relevant offer will be disclosed during your sign-up or in other materials describing the offer. In each case, after your Trial Subscription or Promotional Offer period ends, your Subscription will convert to a paid Subscription, and the Payment Service will begin billing your Payment Method for your Subscription at the then-current Subscription Fee unless you cancel before the offer period ends. You may not be notified that your Trial Subscription or Promotional Offer is about to end unless such notice is required by applicable law.

2.4. PAYMENT AND BILLING:

Ongoing Subscription

By creating a Max Account with a Subscription Provider and providing the Subscription Provider with a Payment Method, you agree to pay the Subscription Provider a Subscription Fee. Subject to [Section 2.3](#), the Subscription Provider will charge the first Subscription Fee to your Payment Method on the date the Subscription Provider confirms your Subscription purchase. After that, the Subscription Fee will be charged to your Payment Method by or on behalf of your Subscription Provider on a recurring basis according to your designated billing cycle unless you cancel before your current Subscription ends.

Billing Cycle



Subscription Fee will be billed at the time you establish your Subscription and on an ongoing basis at the intervals specified when you complete your Subscription purchase unless you cancel your Subscription prior to your Subscription renewal. Please note that the length of your billing cycle will vary based upon the Subscription plan you choose when you subscribe to the Platform. Note that the timing of your billing may change in the event of a problem with your Payment Method (e.g., an expired credit card), in the event you change your Subscription plan or where you start your Subscription on a day not contained in a subsequent month. If you subscribe through us, you can go to the "Subscription" section in your Max Account settings to see your next billing date. If you subscribe through a Third Party Provider, contact your Third Party Provider to see your next billing date.

Subscription Price Changes

Your Subscription Provider may change the Subscription Fee to the Platform and will communicate any price changes to you in accordance with applicable law.

Payment Method

Each Subscription Provider may utilize a Payment Service to process your Payment Method. For certain Payment Methods, the relevant issuer may charge you certain fees, such as transactional fees or other fees relating to the processing of your Payment Method. Taxes and charges may also be applied and may vary depending on the Payment Method used. You will be solely responsible for any such taxes and charges that may apply.

If your Subscription is directly through us, you can go to the "Subscription" section in your Max Account settings or go to <https://auth.max.com/subscription> and sign into your Max Account to update your Payment Method. If your Subscription is with a Third Party Provider, where available, you may update your Payment Method by accessing your account with that Third Party Provider. A change in your Payment Method may result in changes to your prior billing cycle. It is your responsibility to update and maintain the Payment Method associated with your Subscription Fee.

Unpaid Amounts



You are responsible for all charges incurred in connection with your Subscription.

In the event your Payment Method on file with us fails to cover the Subscription Fee, we may suspend your access to the Platform until you update your Payment Method and pay your Subscription Fee. If your subscription is with a Third Party Provider, and you have unpaid amounts, your Third Party Provider may take any action on your Max Account based on the terms of your Subscription with that Third Party Provider.

Your Subscription Provider may retry or permit the Payment Service to retry billing your Payment Method after failed attempts (e.g., if your Payment Method is rejected). Your Subscription Provider also may pursue or permit the Payment Service or another third party to pursue any amounts you fail to pay in connection with your Subscription. Except as specified in [Section 5.4](#), you will remain liable for all amounts and all costs incurred to collect these amounts, such as bank overdraft fees, collection agency fees, reasonable attorney's fees and arbitration costs.

Your Right to Cancel

YOU CAN CANCEL YOUR SUBSCRIPTION AT ANY TIME. YOU MUST CANCEL YOUR SUBSCRIPTION BEFORE IT RENEWS IN ORDER TO AVOID BEING CHARGED FOR THE NEXT CYCLE'S SUBSCRIPTION FEE. If you cancel your Subscription, the cancellation will become effective at the end of the then-current Subscription period and you will continue to have access to your Subscription until the end of that period. If your Subscription is directly through us, you will need to cancel your Subscription through your Max Account settings or go to <https://auth.max.com/subscription> and sign into your Max Account. If you obtained your Subscription through a Third Party Provider, you will need to cancel your Subscription directly with that Third Party Provider in accordance with your agreement with that Third Party Provider.

No Refunds

UNLESS REQUIRED BY APPLICABLE LAW, WE DO NOT PROVIDE REFUNDS FOR ANY SUBSCRIPTION; NOR DO WE PROVIDE CREDIT, REFUNDS OR PRORATED BILLING FOR SUBSCRIPTIONS THAT ARE CANCELLED. A Subscription Provider may choose to offer



refunds, discounts or other consideration as a discretionary accommodation. However, each circumstance is unique and a Subscription Provider's election to make such an offer in one instance does not create the obligation to do so in another.

3. YOUR USE OF THE PLATFORM

3.1 SYSTEM AND COMPATIBILITY REQUIREMENTS:

To use the Platform, you will need to use a computer, mobile device, streaming media player or other device that meets the Platform's system and compatibility requirements (which we may update from time to time). Features and functionalities that we make available through the Platform may differ by device. Please check the requirements periodically, as we may change or stop support of any hardware or software platforms at any time. In order to access the Platform, you need a high-speed internet connection for your compatible device. You are responsible for any costs associated with your internet service. Your use of the Platform may count toward your data usage, depending on the terms of your agreement with your internet service provider. From time to time the Platform may be unavailable for any reason, including, without limitation: (a) equipment malfunctions; (b) our periodic maintenance procedures or repairs; or (c) causes beyond our control or that we cannot reasonably foresee. In addition, on a regular basis, we test various aspects of the Platform, including but not limited to features and functionality that may result in individualized variations to our offers, messaging and user interface.

3.2. CONTENT LIMITATIONS AND DOWNLOADS:

Content Limitations



you may only access the Content on the Platform in your Service Area. Restrictions may be enforced according to the location from which you are accessing the Platform. We may use different technologies and verification methods to determine whether your use is within the Service Area.

The Content available to you may vary based upon your Subscription. In addition, the periods during which you can view each piece of Content will vary based on the rights available for each piece of Content and the terms of your Subscription.

The Content on the Platform (including the Content within each Subscription plan) will change regularly. This means certain series, films, sporting events and other Content may become available while other Content may become unavailable over the duration of your Subscription.

Some Content may specify an access window in which you will be able to view the Content. The access windows will vary, so you should pay close attention to the description provided with the Content. During the access window, you will be able to view the Content as many times as you want BUT ONCE THE ACCESS WINDOW FOR A PARTICULAR CONTENT ITEM ENDS, YOU WILL NO LONGER BE ABLE TO ACCESS THAT CONTENT. It is your responsibility to monitor the access window for each piece of Content. We may disable access to any Content at any time, with or without notice, and regardless of the posted access windows or programming schedules.

We use various technologies to provide you with an optimal viewing experience. That said, the viewing quality of Content, including resolution and the time it takes to begin playing Content, may vary based on your Subscription plan, the format of the Content, your location, the speed and bandwidth of your internet or mobile data service and the devices used, among other factors. HD, Ultra HD and 4K Ultra HD availability, as well as Dolby Atmos audio, if and as applicable, for certain Content depends on your Subscription plan, internet service and device capabilities. Not all Subscription plans allow you to access Content in all formats, not all Content is available in all formats and not all Content within each Subscription Plan may be available at the highest video resolution or sound quality.



However, not all Content will be available to all Authorized Users across all compatible devices. Access to certain Content may depend upon your Subscription plan, your geographic location (e.g., you will not be able to access Content outside the Service Area), whether you are able to maintain an internet connection, or sufficient bandwidth and the equipment used to access the Platform. Read the detailed description of each piece of Content to determine options for viewing that Content. While we do our best to keep the Content descriptions up to date, we do not guarantee that these descriptions will always be complete, current or accurate. We also do not guarantee the availability of any particular Content at any time.

Live Content Availability, Blackouts and Interruptions

Live Content in the Service Area may be subject to blackouts, device-specific limitations or other restrictions. Blackouts may be applied based upon the city or region in which you are trying to access the Platform and we may use different technologies and methods to verify your location at the time of access to the Live Content. No matter which Subscription plan you select, live Content may contain advertising, sponsorships or other interruptions.

Simultaneous Streams

The number of simultaneous streams available to you may vary by Subscription plan. We may control the maximum number of simultaneous streams per Max Account regardless of the number of your devices or Authorized Users who can access the Platform. We may change the maximum number of simultaneous streams and/or impose limits on the number of devices that you may use on each Subscription plan at any time.

Downloads

Certain Content on the Platform may be available for temporary download on certain supported devices and on certain Subscription plans in order to allow you to view that Content offline when you do not have a network connection ("**Downloadable Content**"). To download Content, make sure you have a network connection and sign in to the Platform on your phone or tablet. Choose an episode or movie that you want to download and tap the "Download" icon. We may control



the amount of Downloadable Content permissible for each Max Account (across all Authorized Users and devices) and each Subscription Plan, and the expiration rules

for each piece of Downloadable Content. In addition, within each Subscription plan certain Content categories (e.g., theatrical films) may be subject to additional download sub-limits. Visit our [Max Help Center](https://help.max.com/downloads) at <https://help.max.com/downloads> for additional details. The Platform will provide you with information specifying download limits and expiration rules. Once expired you may not be able to renew Downloadable Content while outside of the Service Area. You may not be able to view certain Downloadable Content that you download while in the Service Area when you are outside of the Service Area.

3.3. CONTENT RATINGS/PARENTAL CONTROLS:

THE PLATFORM OFFERS CONTENT THAT MAY NOT BE APPROPRIATE FOR ALL AGES OR VIEWERS. CONTENT TYPES, GENRES, CATEGORIES AND DESCRIPTIONS ARE PROVIDED AS SUGGESTIONS TO HELP WITH NAVIGATION. YOU MIGHT DISAGREE WITH HOW PARTICULAR CONTENT IS RATED, SOME CONTENT MAY NOT BE RATED AND/OR MAY CONTAIN STRONG OR PROFANE LANGUAGE, VIOLENCE, ALCOHOL, TOBACCO, DRUG OR SUBSTANCE ABUSE, NUDITY, SEXUAL CONTENT, MATURE THEMES AND/OR MATURE CONTENT INTENDED ONLY FOR ADULTS OR THOSE UNDER SUPERVISION OF ADULTS. Content tends to elicit varying reactions among different people. As is true for many websites and content platforms, you may come across Content that you find objectionable or that you believe may be inappropriate for certain members of your family. By accessing the Content you acknowledge and accept these risks.

You Control What Content You and Your Family Can Access

The Platform allows you to customize your settings to control what Content you and your family are able to access ("**Parental Controls**"). If you want to restrict Content, you may create and manage a Kid's Profile. You can set Parental Controls when setting up each Kid's Profile for the first time and you may change settings by going to the "Manage Profiles" section of your Max Account. This will enable you to establish and manage Parental Controls settings for each Kid's Profile connected to



your Max Account. Parental Controls in a Kid's Profile allow you to: (a) set a maximum rating for each Kid's Profile and is designed to filter out non-rated Content; and (b) create and manage a code ("**Parent Code**"), which, when enabled, must be entered in order to exit that Kid's Profile.

In addition to a Parent Code, you may set an additional Parental Control by creating and managing a pin for any Authorized User profile that is not a Kid's Profile ("**Profile PIN**"). When enabled, the Profile PIN must be entered in order to access that Authorized User profile.

Please note that changes made to Parental Controls may not take effect immediately, and during some periods there could be a delay before your new settings become effective.

We do not guarantee that any movie or television ratings are accurate. The Parental Controls and privacy protections that attach to those controls may not always be effective in restricting Content that you or any Authorized User consider objectionable. This may happen if: (a) you do not create a Kid's Profile for any minor child; (b) you do not enable a Parent Code or Profile PIN; (c) you disagree with the Content rating or age classification; (d) changes made to Parental Controls are delayed or do not take effective immediately; (e) an Authorized User of a Kid's Profile has access to the Profile PIN to view Content from another Authorized User with no or different Parental Control settings; or (f) the user of a Kid's Profile has access to the Parent Code to change the Parental Control settings. If you choose to access or view, or allow an Authorized User to access or view, any general audience, adult or mature Content on the Platform, you acknowledge that you or they may be exposed to Content that may include nudity, sexual activity, violence, adult language, alcohol, tobacco, drug or substance use, or material otherwise graphic or potentially offensive in nature. You are solely responsible for monitoring and supervising all use of your Max Account, including those of each Authorized User.

3.4. ADVERTISEMENTS ON THE PLATFORM:



Certain Content within the Platform regardless of Subscription plan may be advertising supported and that Content may change from time to time. Please navigate to our

Max Help Center at <https://help.max.com> for additional information on advertising supported Content. We do not endorse any third-party advertiser, product or service featured on the Platform nor do we take any responsibility for any such third-party advertiser, product or service. Any interactions you may have with an advertiser as a result of using the Platform will be between you and such advertiser. If you engage in any transaction with an advertiser featured on the Platform, including providing that advertiser with any personal information, you agree that we are not responsible for such transaction or provision of personal information and you further agree that we are not liable for any claim or loss that may result from your engagement with any advertiser.

3.5 SERVICE UPDATES AND OTHER PLATFORM UPDATES:

Service Updates

At various times, we may choose to make available updates, bug fixes or other changes or enhancements to the Platform (collectively, "**Service Updates**"). By subscribing to the Platform, you consent to receive all Service Updates without further notice. Service Updates may be:

- (a) Automatic, such as in connection with general website changes and additional features or updates to data required by the Platform;
- (b) At your election, in which case you will receive information and instructions for how to authorize optional Service Updates; or
- (c) Mandatory, in which case you will be required to consent to the Service Update or install or upgrade a third-party plug-in to maintain access to the Platform.

Please note that the Platform may be unavailable during a Service Update.

Platform Updates



We may regularly make updates and changes to the Platform for various reasons, including but not limited to the following to: (i) alter the structure, design or layout of the Platform or any Subscription plan, including changing the name of the Platform, Subscription plans or re-branding, or amending, improving and/or expanding the features and functionalities available on the Platform or as part of a specific Subscription plan; (ii) modify the list of compatible devices and software (including to remove support for the Platform on certain older device types, models, operating systems or categories that are no longer compatible); (iii) maintain the operability of the Platform; (iv) improve security and anti-piracy parameters; or (v) ensure compliance with applicable laws.

3.6. SUSPENSION AND TERMINATION:

Any Subscription Provider may suspend or terminate your Subscription and access to the Platform and/or your Max Account immediately for any reason or for no reason whatsoever, including if any Subscription Provider reasonably determines that you have provided inaccurate account or payment details, you no longer meet the Eligibility Criteria or you are otherwise in violation of this Agreement. In addition to the foregoing, we can modify access or disable features, including for security reasons, to limit the impact of account sharing outside of your household or where we have concluded in our discretion that there has been misuse of your Max Account. If a suspension or termination occurs, you must stop using the Platform. If a Subscription Provider suspends or terminates your Subscription and/or access to all or any part of the Platform, you agree not to create another Max Account or try to access the Platform without permission and such Subscription Provider reserves the right to block any such attempted access to the Platform.

3.7. CUSTOMER SUPPORT:

(a) For Customer Support inquiries related to the Platform or your Subscription directly through us (including Subscription Fee and Payment Method), please visit



our Max Help Center at <https://help.max.com>.

if you are unable to resolve your question by visiting our [Max Help Center](https://help.max.com) at <https://help.max.com> or if you have reason to believe that your Max Account credentials have been compromised or misappropriated in some way, please contact Max Customer Support at 1-855-442-6629 or send us an email at support@max.com.

(b) For Customer Support matters related to your Subscription billed through a Third Party Provider (including Subscription Fee and Payment Method) or other matters relating to billing through your Third Party Provider, please contact your Third Party Provider directly.

3.8. ACCESSIBILITY:

Accessibility Statement

We are committed to facilitating and improving the accessibility and usability of our Platform. We strive to ensure that our Platform is accessible to persons with disabilities, including users of screen reader technology. We endeavor to maintain the Platform in compliance with applicable laws. Our efforts to maintain accessibility and usability are ongoing. While we strive to make the Platform as accessible as possible, we do not guarantee the accessibility of any particular Content or the functionality of Max with all assistive technologies.

Contact Us for Accessibility Questions

If you have questions or concerns about the accessibility of Max, please visit our [Max Help Center](https://help.max.com) at <https://help.max.com> or email us at accessibility@max.com. Please be sure to specify the nature of the concern in your message, and we will review your inquiry.

Captioning

Arthur Woo

WarnerMedia Direct, LLC

230 Park Avenue South

New York, NY 10003

Email: accessibility@max.com

Phone: 1-833-927-7829

To better assist us in addressing your inquiries regarding captioning on Max, please include the following information with your submission:

- Your name, address, telephone number, email address;
- The name of the program with the captioning issue;
- The platform or device used to view the program;
- A description of the captioning concern; and
- Your preferred method of receiving a response to your inquiry (e.g., email, first class mail, etc.).

Please include "Online Captioning Concern" in the subject line of your written communication.

3.9 FEEDBACK, SUBMISSIONS, PHOTO UPLOAD AND POSTINGS:

Feedback

Portions of the Platform may invite you to provide us with feedback, comments or other information ("**Feedback**"). We welcome your Feedback, as it helps us to make the Platform an even better product for you and all of our subscribers. By



submitting Feedback, you agree that we are free to use the Feedback to improve the Platform or for any other purpose permitted by applicable law.

Unsolicited Submissions

We do not accept unsolicited submissions of concepts, creative ideas, suggestions, stories or other potential content. This is to avoid the possibility of a future misunderstanding when projects developed by our staff or representatives might seem to others to be similar to the submitted concepts, creative ideas, suggestions, stories or other potential content. Therefore, please do not send us any unsolicited submissions. If you do, please be aware that no material you send to us will be treated as confidential.

Photo Upload and Postings

If the Platform provides you or other users an opportunity to upload photos, ratings, videos or post and exchange information, content, ideas and opinions (collectively, “**Postings**”), be advised that we shall have the right, but not the obligation to you, to screen and monitor Postings and may decide to remove or edit any Postings, which we consider to be offensive or otherwise in breach of this Agreement, prior to their appearance on the Platform or elsewhere. Postings do not reflect the views of Max and we disclaim all responsibility and liability arising from the Postings.

You represent that: (a) you have all necessary rights in all Postings you provide and all material, content and information they contain and that your Postings shall not violate or infringe upon any proprietary right, intellectual property right or other rights of third parties; (b) you will not upload or post any nudity, obscene materials, hate speech or other objectionable, offensive, illegal or otherwise harmful materials to the Platform; and (c) you will not upload or post any sensitive or confidential personal data as part of the Postings.

3.10. OUR COMMUNICATIONS TO YOU:



By using the Platform, you acknowledge that your Subscription Provider can send you emails, text messages, in-app notifications, push notifications or other electronic service communications about your Max Account. To the extent permitted by applicable law, you also consent to receive electronic promotional messages, offers, surveys and other materials. You understand that texts, calls or prerecorded messages may be generated by automatic telephone dialing systems. Agreeing to receive these promotional texts is not a condition of purchasing any goods or services. If at any time you no longer want to receive promotional communications, you can opt out by either:

- Unsubscribing by clicking on the link at the bottom of the electronic communication;
- For text messages, by responding "STOP"; or
- Signing into the Platform and updating your "Notifications" preferences in "Settings." Changes made to your Notifications settings may not take effect immediately, and there could be a delay before your new settings become effective.

4. COPYRIGHTS AND TRADEMARKS

4.1. COPYRIGHTS AND TRADEMARKS:

The Platform, and all materials incorporated into the Platform are protected by copyrights, patents, trademarks, trade secrets or other legal rights. The copyright holders have licensed this Content for private use only and not for public or commercial exhibition. This means that you may not: (a) show any Content to any public audience or view it in a public location; or (b) attempt to circumvent, avoid, bypass, remove, deactivate, impair or otherwise defeat any encryption, rights signaling or copy protection technology for the Content. Unauthorized copying,



reproduction, exhibition, broadcast or distribution of a copyrighted program can result in severe criminal and civil penalties under U.S. or any other applicable laws.

Some of the characters, logos or other images on the Platform are also protected as our registered or unregistered trademarks, trade names and/or service marks ("**Trademarks**"). All other trademarks are the property of their respective owners. Use of our Trademarks or of anyone else's trademarks is not authorized other than as incorporated into the Platform.

We may gather data on Platform usage and other information to ensure that the Platform is being used in accordance with this Agreement. You agree not to block this transmission of data. If you do so, it will be considered a violation of this Agreement and may result in immediate termination of your Subscription.

4.2. COPYRIGHT NOTICE:

If you believe that any content appearing on any part of the Platform has been copied in a way that constitutes copyright infringement under the laws of the Service Area, please forward the following information to the Copyright Agent named below:

- Your name, address, telephone number, and email address;
- A description of the copyrighted work that you claim has been infringed;
- The exact URL or a description of where the alleged infringing material is located;
- A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent or the law;
- An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; and
- A statement by you that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

230 Park Ave South

Attn: Legal Department/Copyright Agent

Email: copyrightviolations@max.com

4.3. RESTRICTIONS ON USE OF THE PLATFORM:

Please be aware that it is copyright infringement to make an unauthorized copy of any element or any portion of the Platform, including the Content or underlying software.

You are only authorized to access and display Content on the Platform in the Service Area for your non-commercial, personal, entertainment use on compatible devices while your Subscription remains active and in good standing and only as permitted in this Agreement. You may not:

- copy, reproduce, distribute, transfer, sell, license, publish, enter into a database, display, perform publicly, modify, create derivative works, upload, edit, post, link to, frame, transmit, rent, lease, lend or sublicense or in any way exploit any part of the Platform, or attempt to interfere with the operation of the Platform;
- use any data mining, robots, virus, worms, bugs or other data gathering and extraction tools on the Platform, or frame any portion of the Platform, or attempt to tamper, hack, corrupt or impair the administration and/or security of the Platform;
- use the Content files or other elements of the Platform to construct any kind of database;



reverse engineer, copy, decompile, disassemble, derive the source code of, modify, adapt, capture, reproduce, publicly display, publicly perform, transfer, sell, license, create derivative works from or based upon, republish, upload, edit, post, transmit, distribute, exploit, circumvent or otherwise translate, in whole or in part, the Platform or any Content or attempt, or encourage or assist any other person, to take any of the above action; or

- circumvent, disable, or otherwise tamper with any security technology protecting any Content, system resources, accounts or any other part of the Platform or to attempt or assist another person to do so. It is prohibited to use or distribute tools designed for compromising security (e.g., password guessing programs, cracking tools or network probing tools).

If we authorize you to copy any part of the Platform, this authorization is limited to viewing a single copy for non-commercial, personal, entertainment use only, and requires you to keep intact all copyright, trademark and other proprietary notices. Using any material on any other service or networked computer environment is prohibited.

5. ADDITIONAL LEGAL TERMS

To the greatest extent permitted by applicable law, the following additional legal terms shall apply:

5.1. DISCLAIMER OF WARRANTIES:

THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CONTENT AVAILABILITY AND VIEWING QUALITY AND NON-INFRINGEMENT. WE DO



NOT WARRANT THAT THE PLATFORM WILL BE AVAILABLE, UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED OR THAT THE PLATFORM OR THE SERVERS THAT MAKE IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ADDITIONALLY, NO SUBSCRIPTION PROVIDER SHALL BE LIABLE FOR ANY LOSS OR DAMAGE ARISING FROM THE USE OR MISUSE OF YOUR MAX ACCOUNT.

5.2. LIMITATION OF LIABILITY AND TIME LIMITATION FOR CLAIMS:

Limitation of Liability

YOU AGREE THAT MAX AND OUR PARENT, THIRD PARTY PROVIDERS, DISTRIBUTORS, SUPPLIERS, LICENSORS AND ASSIGNS, AND EACH OF THEIR RESPECTIVE EMPLOYEES, OFFICERS, MEMBERS AND DIRECTORS (COLLECTIVELY, THE "RELEASED PARTIES") ARE NOT LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING FOR ANY LOST PROFITS OR LOST DATA ARISING OUT OF OR IN CONNECTION WITH THE PLATFORM (COLLECTIVELY, THE "RELEASED MATTERS"). THE RELEASED PARTIES' LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU, SOLELY FOR THE MAX PLATFORM DURING THE TWELVE (12) MONTHS PRIOR TO THE CLAIM. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF SOME TYPES OF DAMAGES. THE ABOVE EXCLUSIONS WILL APPLY ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW. YOU AGREE THAT ANY DAMAGES YOU INCUR ARISING OUT OF THIS AGREEMENT ARE NOT IRREPARABLE AND ARE INSUFFICIENT TO ENTITLE YOU TO AN INJUNCTION OR OTHER EQUITABLE RELIEF RESTRICTING THE AVAILABILITY OF, OR ANY PERSON'S ABILITY TO ACCESS, ANY PORTION OF THE PLATFORM.

Time Limitations for Claims

TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM RELATING IN ANY WAY TO THE PLATFORM OR THIS AGREEMENT MUST BE COMMENCED WITHIN ONE (1) YEAR OF THE EVENTS FIRST GIVING RISE TO THE CLAIM. IF NOT COMMENCED WITHIN



THIS ONE (1) YEAR PERIOD, YOU AND WE ARE EACH PERMANENTLY BARRED FROM PURSUING THAT CLAIM.

5.3. INDEMNITY:

You agree to indemnify and hold harmless the Subscription Provider(s) and their respective parents, subsidiaries, affiliates, partners, agents and licensors, and the officers, directors, employees, members and shareholders of all of the foregoing (collectively, the “Indemnified Parties”), from and against all third party claims, losses, expenses, damages and costs, including reasonable attorney’s fees, resulting from your actual or alleged breach of this Agreement.

You will cooperate as fully and as reasonably required in our defense of any claim. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and you shall not in any event settle any such matter without our written consent.

5.4. DISPUTE RESOLUTION:

We endeavor to resolve subscriber concerns as quickly as possible. Please contact Max Customer Support as described in [Section 3.7](#).

In the unlikely event that you’re not satisfied with Max Customer Support’s solution and you and we are unable to resolve a dispute through the Informal Dispute Resolution Procedures below, we each agree to resolve the dispute through binding arbitration or small claims court instead of in courts of general jurisdiction.

Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Unless expressly limited by this arbitration provision, arbitrators can award the same damages and relief that a



court can award. **Any arbitration under this Agreement will take place on an individual basis; class arbitrations and class actions are not permitted.** In arbitration you may be entitled to recover attorneys' fees from us to the same extent as you would be in court.

ARBITRATION AGREEMENT

(a) Claims Subject to Arbitration: To the fullest extent permitted by applicable law, Max and you agree to arbitrate **all disputes and claims** between us, except for claims arising from bodily injury or that pertain to enforcing, protecting or the validity of your or our intellectual property rights (or the intellectual property rights of any of our licensors, affiliates and partners). This Arbitration Agreement is intended to be broadly interpreted. It includes, but is not limited to:

- claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, fraud, misrepresentation or any other statutory or common-law legal theory;
- claims that arose before this or any prior Agreement (including, but not limited to, claims relating to advertising);
- claims for mental or emotional distress or injury not arising out of physical bodily injury;
- claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and
- claims that may arise after the termination of this Agreement.

References to "Max," "you," "we" and "us" in this Arbitration Agreement include our respective predecessors in interest, successors and assigns, as well as our respective past, present and future parents, subsidiaries and affiliates (including Warner Bros. Discovery, Inc. and its affiliates); those entities and our respective agents, employees, licensees, licensors and providers of Content as of the time your or our claim arises; and all authorized or unauthorized users or beneficiaries of the Platform under this or prior Agreements between us. Notwithstanding the foregoing, either party may elect to have claims heard in small claims court seeking only individualized relief, so long as the action is not removed or appealed to a



court of general jurisdiction. This Arbitration Agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies. **You agree that,**

by entering into this Agreement, you and we are each waiving the right to a trial by jury or to participate in a class action and to a trial by jury to the fullest extent permitted by applicable law. This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act (9 U.S.C. §§ 1-16) governs the interpretation and enforcement of this arbitration provision. This Arbitration Agreement shall survive termination of your subscription or this Agreement.

(b) Mandatory Pre-Arbitration Notice and Informal Dispute Resolution

Procedures: You and we agree that good-faith, informal efforts to resolve disputes often can result in a prompt, cost-effective, and mutually beneficial outcome. Therefore, a party who intends to initiate arbitration or file a claim in small claims court must first send to the other a written Notice of Dispute ("**Notice**"). A Notice from you to Max must be emailed to notice@wbd.com ("**Notice Address**"). A Notice to you by Max must be sent to the email address associated with your Max subscription. Any Notice must include (i) the claimant's name, address, and email address; and (if different) the email address associated with the relevant Max subscription; (ii) if you are submitting the Notice, how and when you became a subscriber, your subscription history, and current subscription status; (iii) a description of the nature and basis of the claim or dispute, including any relevant facts, and if you are submitting the Notice, facts pertaining to your use of Max and the platform(s) on which you watch it (e.g., via connected TV, iPhone, desktop); (iv) a description of the nature and basis of the specific relief sought, including the damages sought, if any, and a detailed calculation for them; (v) a personally signed statement from the claimant (and not their counsel) verifying the accuracy of the contents of the Notice; and (vi) if you are the claimant and are represented by counsel, your signed statement authorizing Max to disclose your Max Account details to your attorney while seeking to resolve your claim. The Notice must be individualized, meaning it can only concern only your dispute and no other person's dispute.



After receipt of a completed Notice, the parties shall engage in a good faith effort to resolve the dispute for a period of 60 days (which can be extended by agreement). You and we agree that, after receipt of the completed Notice, the recipient may request an individualized telephone or video settlement conference (which can be held after the 60-day period) and both parties will personally attend (with counsel, if represented). You and we agree that the parties (and counsel, if represented) shall work cooperatively to schedule the conference at the earliest mutually-convenient time and to seek to reach a resolution. If we and you do not reach an agreement to resolve the issues identified in the Notice within 60 days after the completed Notice is received (or a longer time if agreed to by the parties), you or we may commence an arbitration proceeding or a small claims court proceeding (if permitted by small claims court rules).

Compliance with this Mandatory Pre-Arbitration Notice and Informal Dispute Resolution Procedures section is a condition precedent to initiating arbitration. Any applicable limitations period (including statute of limitations) and any filing fee deadlines shall be tolled while the parties engage in the informal dispute resolution procedures set forth in this [Subsection 5.4\(b\)](#). All of the Mandatory Pre-Arbitration Notice and Informal Dispute Resolution Procedures are essential so that you and Max have a meaningful opportunity to resolve disputes informally. If any aspect of these requirements has not been met, a court of competent jurisdiction may enjoin the filing or prosecution of an arbitration. In addition, unless prohibited by law, the arbitration administrator may not accept, administer, assess or demand fees in connection with an arbitration that has been initiated without completion of the Notice and Informal Dispute Resolution Procedures. If the arbitration is already pending, it shall be administratively closed. Nothing in this paragraph limits the right of a party to seek damages for non-compliance with these Procedures in arbitration.

(c) Arbitration Procedure: The arbitration will be governed by applicable rules of National Arbitration & Mediation (“**NAM**”) (including the Comprehensive Dispute Resolution Rules and Procedures and/or the Supplemental Rules for Mass Arbitration Filings, as applicable) (“**NAM Rules**”), as modified by this Arbitration Agreement, and will be administered by the NAM. (If the NAM is unavailable or



any willing to do so, another arbitration provider shall be selected by the parties that will do so, or if the parties are unable to agree on an alternative administrator, by the court pursuant to 9 U.S.C. § 5.) The NAM Rules are available online at <https://namadr.com/> by calling NAM at 1-800-358-2550, or by requesting them in writing at the Notice Address. You may obtain a form to initiate arbitration at: <https://namadr.com/content/uploads/2020/09/Comprehensive-Demand-for-Arb-revised-9.18.19.pdf> or by contacting NAM.

You and we agree as otherwise expressly provided herein and except as to the party initiating arbitration must submit a certification that they have complied with and completed the Notice and Informal Dispute Resolution requirements referenced in [Subsection 5.4\(b\)](#) and that they are a party to the Arbitration Agreement enclosed with or attached to the demand for arbitration. The demand for arbitration and certification must be personally signed by the party initiating arbitration (and their counsel, if represented).

All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the Arbitration Agreement or whether a dispute can or must be brought in arbitration (including whether a dispute is subject to this Arbitration Agreement or a previous arbitration provision between you and Max), which are for a court of competent jurisdiction to decide. The arbitrator may consider but shall not be bound by rulings in other arbitrations involving different customers.

Unless we and you agree otherwise, or the applicable NAM Rules dictate otherwise, any arbitration hearings will take place in the county (or parish) of your billing address and you and a Max representative will be required to attend in person. At the conclusion of the arbitration proceeding, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based.

The arbitrator's decision is binding only between you and Max and will not have any preclusive effect in another arbitration or proceeding that involves a different party. An arbitrator's award that has been fully satisfied shall not be entered in any court.



As in court, you and Max agree that any counsel representing a party in arbitration certifies when initiating and proceeding in arbitration that they are complying with

the requirements of Federal Rule of Civil Procedure 11(b), including certification that the claim or relief sought is neither frivolous nor brought for an improper purpose. The arbitrator is authorized to impose any sanctions under the NAM Rules, Federal Rule of Civil Procedure 11, or applicable federal or state law, against all appropriate represented parties and counsel.

Except as expressly provided in the Arbitration Agreement, the arbitrator may grant any remedy, relief, or outcome that the parties could have received in court, including the awards of attorneys' fees and costs in accordance with applicable law. Unless otherwise provided by applicable law, the parties shall bear their own attorneys' fees and costs in arbitration unless the arbitrator awards sanctions or finds that either the substance of the claim, the defense, or the relief sought is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)).

(d) Arbitration Fees: The payment of arbitration fees (the fees imposed by the arbitration administrator including filing, arbitrator, and hearing fees) will be governed by the applicable NAM Rules unless you qualify for a fee waiver under applicable law. If after exhausting any potentially available fee waivers, the arbitrator finds that the arbitration fees will be prohibitive for you as compared to litigation, we will pay as much of your filing, arbitrator, and hearing fees in the arbitration as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive, regardless of the outcome of the arbitration, unless the arbitrator determines that your claim(s) were frivolous or brought for an improper purpose or asserted in bad faith. You and we agree that arbitration should be cost-effective for all parties and that any party may engage with NAM to address the reduction or deferral of fees.

(e) Confidentiality: Upon either party's request, the arbitrator will issue an order requiring that confidential information of either party disclosed during the arbitration (whether in documents or orally) may not be used or disclosed except in connection with the arbitration or a proceeding to enforce the arbitration award



and that any permitted court filing of confidential information must be done under seal to the furthest extent permitted by law.

(f) Offer of Settlement: In any arbitration between you and Max, the defending party may, but is not obligated to, make a written settlement offer at any time before the evidentiary hearing or, if a dispositive motion is permitted, prior to the dispositive motion being granted. The amount or terms of any settlement offer may not be disclosed to the arbitrator until after the arbitrator issues an award on the claim. If the award is issued in the other party's favor and is less than the defending party's settlement offer or if the award is in the defending party's favor, the other party must pay the defending party's costs incurred after the offer was made, including any attorney's fees. If any applicable statute or case law prohibits the shifting of costs incurred in the arbitration, then the offer in this provision shall serve to cease the accumulation of any costs to which the party bringing the claim may be entitled for the cause of action under which it is suing.

(g) Requirement of Individualized Relief: The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AND WE AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR OUR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL PROCEEDING.** Further, unless both you and we agree otherwise, the arbitrator may not consolidate more than one person's claims and may not otherwise preside over any form of a representative, class or private attorney general proceeding. If, after exhaustion of all appeals, any of these prohibitions on non-individualized declaratory or injunctive relief; class, representative and private attorney general claims; and consolidation are found to be unenforceable with respect to a particular claim or with respect to a particular request for relief (such as a request for injunctive relief sought with respect to a particular claim), then the parties agree such a claim or request for relief shall be decided by a court of competent jurisdiction, after all other arbitrable claims and requests for relief are arbitrated. You agree that any arbitrations between you and Max will be subject to this



Section 5.4 and not to any prior arbitration agreement you had with Max, and, notwithstanding any provision in this Agreement to the contrary, you agree that this [Section 5.4](#) amends any prior arbitration agreement you had with Max, including with respect to claims that arose before this or any prior arbitration agreement.

(h) Opt Out of Future Changes: Notwithstanding any provision to the contrary, if Max makes any future change to this Arbitration Agreement (other than a change to the Notice Address), you may reject any such change by sending Max an email from the email address associated with your Max subscription to notice@wbd.com within 30 days of notice of the change that provides: (i) your full legal name, (ii) your complete mailing address, (iii) your phone number, (iv) if applicable, the username or email address associated with any potential account or newsletter; and (v) when and how you subscribed to Max. Such an opt-out email must be sent by you personally, and not by your agent, attorney, or anyone else purporting to act on your behalf. It must include a statement, personally signed by you, that you wish to reject the change to the Arbitration Agreement. This is not an opt out of arbitration altogether.

(i) Mass Filing: If, at any time, 25 or more claimants (including you) submit Notices or seek to file demands for arbitration raising similar claims against the other party or related parties by the same or coordinated counsel or entities, consistent with the definition and criteria of Mass Filings ("**Mass Filing**") set forth in NAM's Mass Filing Supplemental Dispute Resolution Rules and Procedures ("NAM's Mass Filing Rules," available at <https://namadr.com/resources/rules-fees-forms/>), you and we agree that the additional procedures set forth below shall apply. The parties agree that throughout this process, their counsel shall meet and confer to discuss modifications to these procedures based on the particular needs of the Mass Filing. The parties acknowledge and agree that by electing to participate in a Mass Filing, the adjudication of their dispute might be delayed. Any applicable limitations period (including statute of limitations) and any filing fee deadlines shall be tolled beginning when the Pre-Arbitration Notice and Informal Dispute Resolution Procedures are initiated, so long as the pre-arbitration Notice complies with the requirements in [Subsection 5.4\(b\)](#), until your claim is selected to proceed as part of



- **Stage One:** Counsel for the claimants and counsel for Max shall each select 25 claims per side (50 claims total) to be filed and to proceed in individual arbitrations as part of a staged process. Each of these individual arbitrations shall be assigned to a different, single arbitrator unless the parties agree otherwise in writing. Any remaining claims shall not be filed or deemed filed in arbitration, nor shall any arbitration fees be assessed in connection with those claims unless and until they are selected to be filed in individual arbitration proceedings as part of a staged process. After this initial set of staged proceedings is completed, the parties shall promptly engage in a global mediation session of all remaining claims with a retired federal or state court judge and Max shall pay the mediator's fee.
- **Stage Two:** If the remaining claims are not resolved at this time, counsel for the claimants and counsel for Max shall each select 50 claims per side (100 claims total) to be filed and to proceed in individual arbitrations as part of a second staged process, subject to any procedural changes the parties agreed to in writing. Each of these individual arbitrations shall be assigned to a different, single arbitrator unless the parties agree otherwise in writing. Any remaining claims shall not be filed or deemed filed in arbitration, nor shall any arbitration fees be assessed in connection with those claims unless and until they are selected to be filed in individual arbitration proceedings as part of a staged process. After this second set of staged proceedings is completed, the parties shall promptly engage in a global mediation session of all remaining claims with a retired federal or state court judge and Max shall pay the mediator's fee.
- **Stage Three:** If the remaining claims are not resolved at this time, counsel for the claimants and counsel for Max shall each select 100 claims per side (200 claims total) to be filed and to proceed in individual arbitrations as part of a third staged process, subject to any procedural changes the



parties agreed to in writing. Any remaining claims shall not be filed or deemed filed in arbitration, nor shall any arbitration fees be assessed in connection with those claims unless and until they are selected to be filed in individual arbitration proceedings as part of a staged process. Following this third set of staged proceedings, counsel for claimants may elect to have the parties participate in a global mediation session of all remaining claims with a retired federal or state court judge.

If your claim is not resolved as part of the staged process identified above, either:

- **Option One:** You and Max may separately or by agreement, opt out of arbitration and elect to have your claim heard in court consistent with the Agreement. You may opt out of arbitration by providing your individual, personally signed notice of your intention to opt out by sending Max an email from the email address associated with your Max subscription to notice@wbd.com. Such an opt-out email must be sent by you personally, and not by your agent, attorney or anyone else purporting to act on your behalf. It must include a statement, personally signed by you, that you wish to opt out of arbitration within 30 days after the conclusion of Stage 3 or the elective mediation associated with Stage 3. Max may opt your claim out of arbitration by sending an individual, personally signed notice of its intention to opt out to your counsel within 14 days after the expiration of your 30 day opt out period. Counsel for the parties may agree to adjust these deadlines.

OR

- **Option Two:** If neither you nor Max elect to have your claim heard in court consistent with Option One, then you agree that your claim will be resolved as part of continuing, staged individual arbitration proceedings as set forth below. Assuming the number of remaining claims exceeds 200, then 200 claims shall be randomly selected (or selected through a process agreed to by counsel for the parties) to be filed and to proceed in individual arbitrations as part of a staged process. If the number of remaining claims is fewer than 200, then all of those claims shall be filed



and proceed in individual arbitrations. Any remaining claims shall not be filed or deemed filed in arbitration, nor shall any arbitration fees be

assessed in connection with those claims unless and until they are selected to be filed in individual arbitration proceedings as part of a staged process. After each set of 200 claims are adjudicated, settled, withdrawn or otherwise resolved, this process shall repeat consistent with these parameters. Counsel for the parties are encouraged to meet and confer, participate in mediation and engage with each other and with NAM (including through a Procedural Arbitrator) to explore ways to streamline the adjudication of claims, increase the number of claims to proceed at any given time, promote efficiencies, conserve resources, and resolve the remaining claims.

A court of competent jurisdiction shall have the authority to enforce these Mass Filing provisions and, if necessary, to enjoin the mass filing, prosecution, or administration of arbitrations and the assessment of arbitration fees. If these additional procedures apply to your claim, and a court of competent jurisdiction determines that they are not enforceable as to your claim, then your claim shall proceed in a court of competent jurisdiction consistent with this Agreement.

You and Max agree that we each value the integrity and efficiency of arbitration and wish to employ the process for the fair resolution of genuine and sincere disputes between us. You and Max acknowledge and agree to act in good faith to ensure the processes set forth herein are followed. The parties further agree that application of these Mass Filing procedures have been reasonably designed to result in an efficient and fair adjudication of such cases.

(j) Severability: If any portion of this Arbitration Agreement is found to be void, invalid, or otherwise unenforceable, then that portion shall be deemed to be severable and, if possible, superseded by a valid, enforceable provision, or portion thereof, that matches the intent of the original provision, or portion thereof, as closely as possible. The remainder of this Arbitration Agreement shall continue to be enforceable and valid according to the terms contained herein.



5.5. CLASS ACTION AND JURY TRIAL WAIVER:

You and Max agree that, to the fullest extent permitted by law, each party may bring claims (whether in court or in arbitration) against the other only in an individual capacity, and not participate as a plaintiff, claimant or class member in any class, collective, consolidated, private attorney general or representative proceeding. This means that you and Max may not bring a claim on behalf of a class or group and may not bring a claim on behalf of any other person unless doing so as a parent, guardian or ward of a minor or in another similar capacity for an individual who cannot otherwise bring their own individual claim. This also means that you and Max may not participate in any class, collective, consolidated, private attorney general or representative proceeding brought by any third party. Notwithstanding the foregoing, you or Max may participate in a class-wide settlement.

To the fullest extent permitted by law, you and Max waive any right to a jury trial.

5.6. INVESTIGATIONS:

We may investigate suspected violations of this Agreement. As part of such an investigation, we may gather information from you and take appropriate steps to address any such violations. We will collect and use any such information in accordance with the Max Privacy Policy.

5.7. HYPERLINKS TO AND FROM THIRD PARTY SITES:

The Platform may link you to other sites on the internet including, without limitation, social media sites or sites owned or controlled by us or by Third Party Providers. These other sites are not under our control, and you acknowledge that (whether or not these sites are affiliated in any way with Max or any Third Party



Provided, we are not responsible for the accuracy, copyright compliance, legality, decency or any other aspect of these sites. You should review the applicable terms of use and privacy policy for any such third-party site to understand your rights.

5.8. THIRD PARTY SUBSCRIPTION PROVIDER TERMS:

This Agreement, together with the additional conditions of your Subscription, constitute an agreement between you and us, and not between you and any other Third Party Provider(s). Unless otherwise specified in these Terms, Third Party Providers will have no obligation to provide technical maintenance for the Platform or respond to product claims regarding the Platform. Third Party Providers are not responsible for any product or intellectual property claims associated with the Platform. Please review your Third Party Provider's terms of use and user agreements to confirm your compliance with those terms.

iOS Subscribers

You must comply with the App Store Terms of Use in addition to this Agreement when accessing the Platform via iOS products. You acknowledge and agree that Apple Inc. ("**Apple**"), and any subsidiaries of Apple, are third party beneficiaries of this Agreement. Upon your acceptance of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third-party beneficiary hereof.

5.9. USE IN SERVICE AREA ONLY:

The Platform is intended for viewing and use solely within the Service Area. You are prohibited from using any technology to mask your location or hinder our ability to determine your location. We may use technologies to verify your geographic location.

Contact Information:

New York, NY 10003

This Agreement shall be governed by the laws of the State of New York, without regard to conflict of law principles. Any dispute that is not subject to arbitration under [Section 5.4](#) of this Agreement or any issues involving arbitrability or enforcement of any provisions under [Section 5.4](#) shall be brought in the appropriate state or federal court located in New York County, New York, and we and you each irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts in New York County, New York for the adjudication of all non-arbitral claims.

We shall not have any liability to you by reason of any delay or failure to perform any obligation under this Agreement if the delay or failure to perform is occasioned by force majeure, which shall refer to any act of God, storm, fire, casualty, unanticipated work stoppage, power outage, satellite failure, strike, lockout, labor dispute, civil disturbance, riot, war, public health emergency, epidemic, pandemic or national emergency, Governmental action or other cause beyond our control.



5.12. EXPORT CONTROLS; OFAC COMPLIANCE:

You may not use or otherwise export or re-export the software except as authorized by United States law and the laws of the jurisdiction in which the software was obtained. In particular, but without limiting the generality of the foregoing, the software and other relevant elements of the Platform may not be exported or re-exported into any U.S. embargoed countries or to any countries prohibited by U.S. laws, rules or regulations.

By accessing the Platform, you confirm that you are not subject to sanctions imposed by the U.S. and you are not considered by the Office of Foreign Assets Control (OFAC) to be a specially designated national.

5.13. WHAT HAPPENS IF WE CHANGE THESE TERMS:

We reserve the right to modify this Agreement, the Subscription Fee, the benefits associated with any Subscription plan, additional conditions of your Subscription or change any part of the Platform at any time. We will communicate material changes to this Agreement by making the revised Terms available for your review on the Platform. If you access the Platform through a mobile device, we may also communicate changes through updated versions of the Platform software. The date that this Agreement was last modified can be found at the end of these Terms. The modified Terms will become effective and govern your use of the Platform upon the date and time they are posted to the Platform.

If any change materially limits the availability of the Platform, then in addition to posting the revised Terms on the Platform, if required by applicable law, we will communicate this limitation by sending an email to the address associated with your Max Account. As such, it is important that you keep your Max Account information up to date.

By continuing to use the Platform after any revised Terms come into effect and, in the case of any Subscription, your decision not to cancel your Subscription before it



5.14. ADDITIONAL TERMS AND CONDITIONS:

You may have to accept additional terms and conditions in order to use certain features offered through the Platform. If there is a conflict or inconsistency between those additional terms and this Agreement, those additional terms will prevail solely with respect to your use of the particular feature to which they apply.

5.15. MISCELLANEOUS:

This Agreement, together with the additional conditions of your Subscription, constitute the entire agreement between you and Max with respect to this subject matter and supersede all prior or contemporaneous written or oral agreements between you and Max with respect to this subject matter, including but not limited to any prior account or Subscription. This Agreement may not be amended, nor any obligation waived, without our written authorization.

This Agreement between you and Max is personal to you and no third party is entitled to benefit under it. We reserve the right to assign or transfer this Agreement and your Subscription to any person or entity that acquires ownership of or control over the Platform. Your rights and obligations under this Agreement are non-transferrable.

Last updated: May 23, 2023

[PRIVACY POLICY](#)

[CHILDREN'S PRIVACY](#)

[TERMS OF USE](#)

[Cookie Settings](#)

